





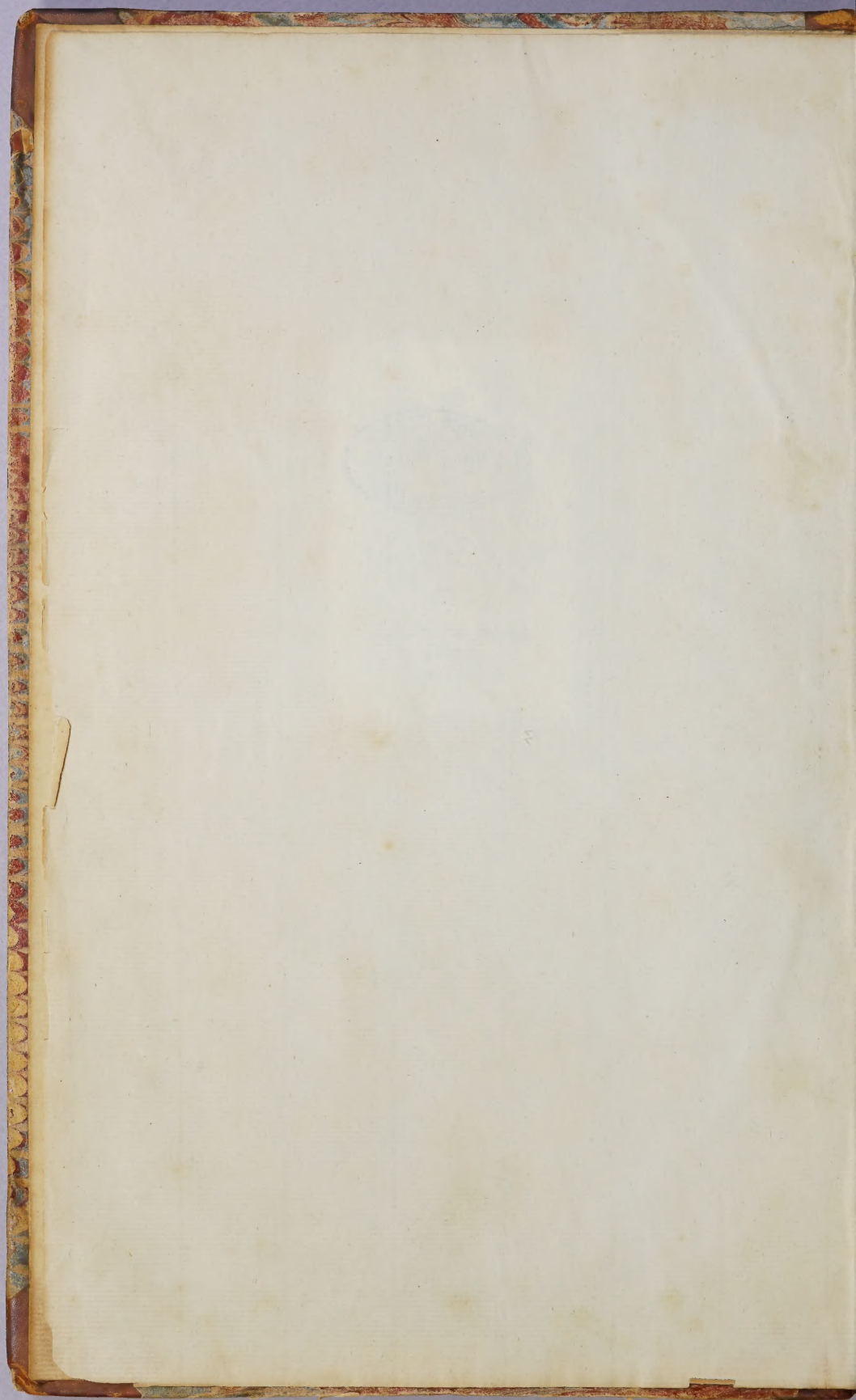
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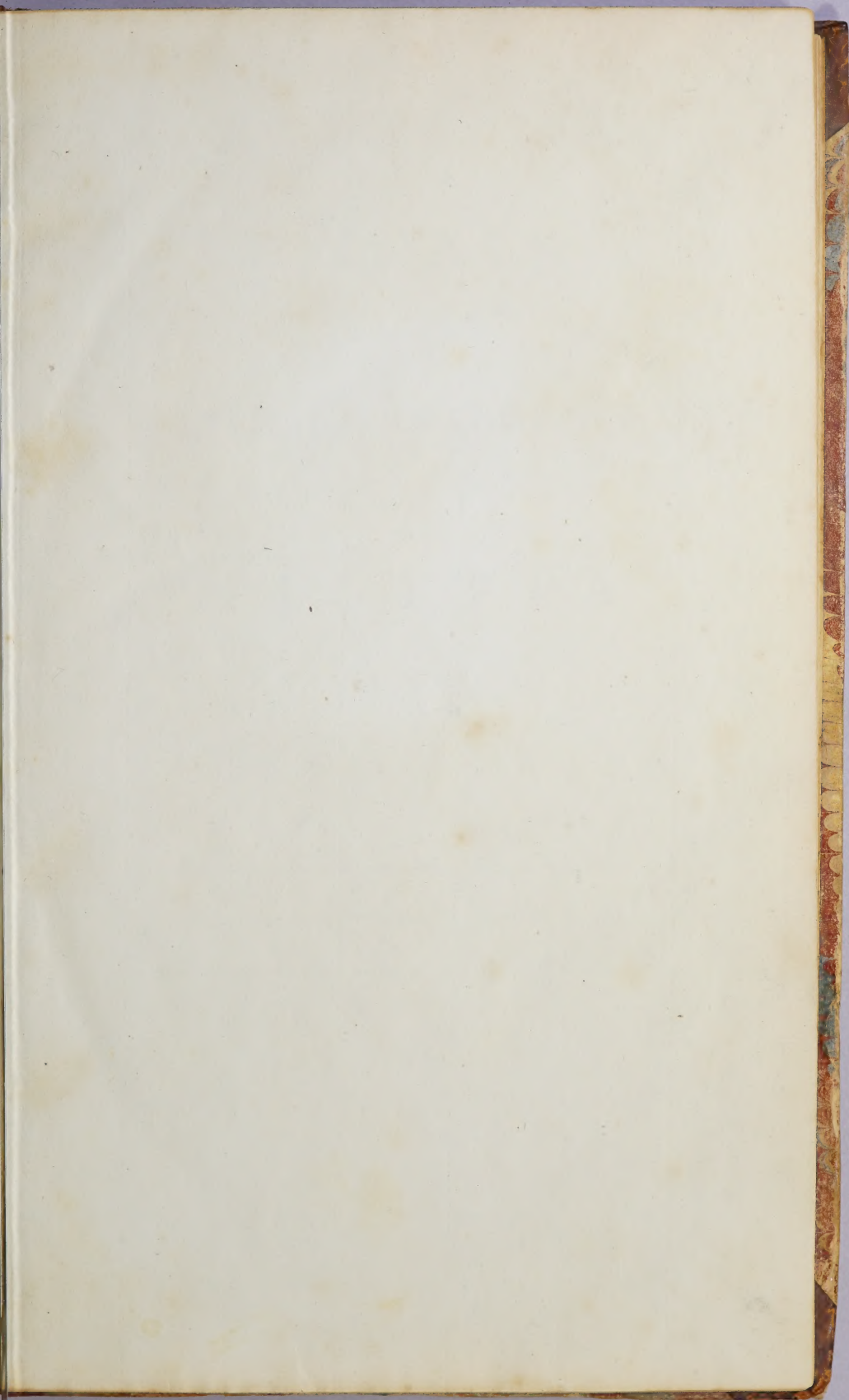
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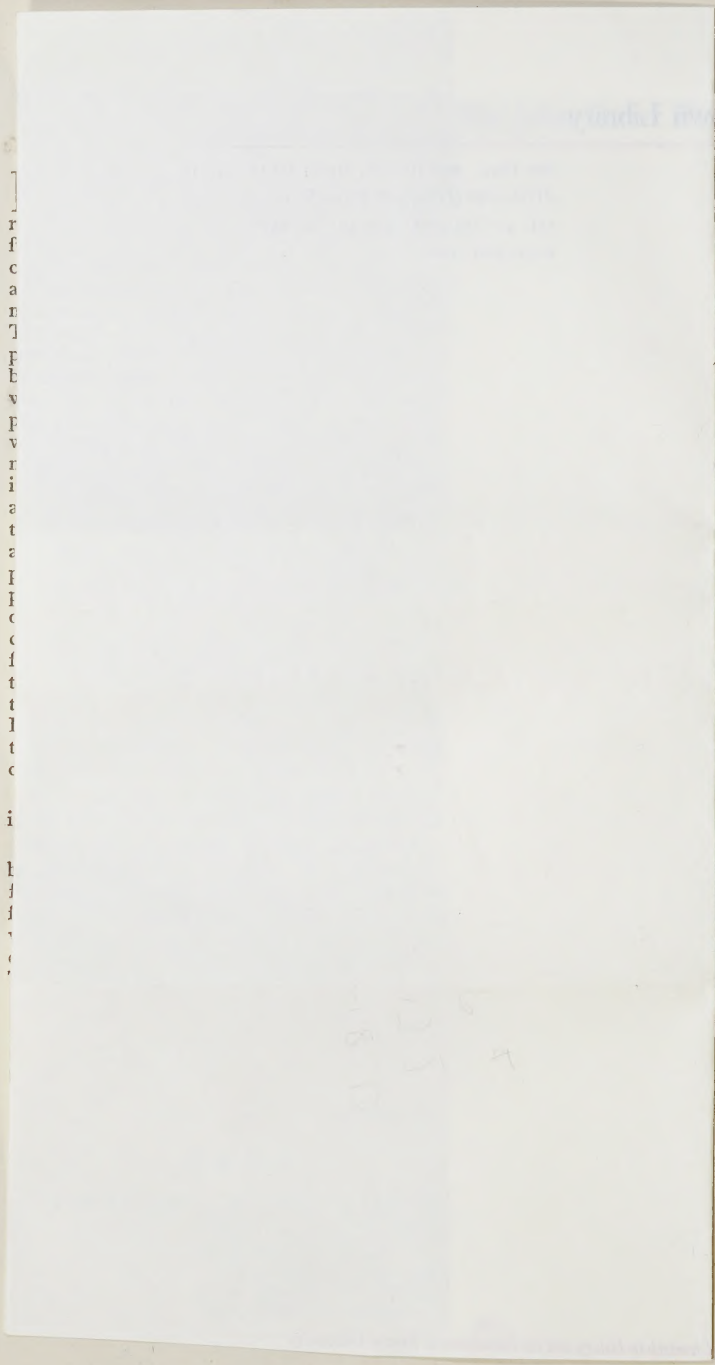












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*Mr. Randolph's Report*

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*Dec 27. 1790*

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R E P O R T  
OF THE  
ATTORNEY-GENERAL.

READ IN THE  
HOUSE OF REPRESENTATIVES,  
DECEMBER 31, 1790.

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THE OFFICE OF THE ATTORNEY GENERAL

WASHINGTON, D. C.

REPORT

OF THE

ATTORNEY GENERAL

FOR THE YEAR 1900

DECEMBER 31, 1900

REPORT

OF THE

ATTORNEY GENERAL

FOR THE YEAR 1900

DECEMBER 31, 1900

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OF THE

ATTORNEY GENERAL


FOR THE YEAR 1900

DECEMBER 31, 1900

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PRICE





PHILADELPHIA, December 27, 1790.

SIR,

THE Order of the House of Representatives, requiring me to report on the JUDICIARY SYSTEM of the United States, has prescribed a task of no common difficulty.

I doubt whether any one man could answer for the accuracy of such a work; and even for more than one, a greater portion of time would be necessary, to insure precision, than the interval between the last and present session.

But these are not my only embarrassments. I am called upon to revise a plan approved by legislative wisdom; and although I have examined it with a deference most respectful and sincere, yet have I been compelled to question the fitness of some of its leading features.

I submit, therefore, to the candor and indulgence of the House, the enclosed Report. The first part contains an enumeration of what I conceive to be the principal defects. Those of the smaller kind would have been treated in the same form, but for the opportunity, which a bill affords, to avoid too much minuteness of comment, and to express my ideas more definitely.


A bill is prepared in the second part, in which a large share of the former matter is preserved. But the language and arrangement of the judicial law have not been implicitly pursued; it being almost impracticable to incorporate the proposed amendments by references to pages and lines. Where the changes or additions are essential, I have endeavored to justify them by explanatory remarks.

After all, however, I am persuaded that time and practice can alone mature the judicial system. If in this attempt to put it into the train of improvement, I have maintained errors in doctrine, it is a consolation to me to reflect, that my opinions have nothing of authority in them.

I have the honor, Sir, to be,  
With the highest respect,  
Your most obedient servant,

Edmund Randolph.

The SPEAKER of the House of Representatives.



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R E P O R T  
OF THE  
ATTORNEY-GENERAL  
TO THE  
HOUSE OF REPRESENTATIVES.

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*THE ATTORNEY-GENERAL, to whom were referred by the Order of the HOUSE OF REPRESENTATIVES, "such Matters relative to the Administration of Justice under the Authority of the UNITED STATES, as may require to be remedied, and such Provisions in the respective Cases, as he should deem advisable," in obedience thereto makes the following*

R E P O R T.

I. **T**HE first object of this duty is to suggest any defects existing in the judiciary system.

The Courts of the United States demand an organization, of which we have no apposite example in the history of foreign jurisprudence; and our own scheme has not received the full light of experience. The following observations must therefore depend for their chief support, on reasoning, unaccompanied by precedent.

From which of the judicial powers enumerated in the Constitution, the state courts may be rightfully excluded, is an enquiry, to which an early part of the judiciary law gives birth.

The aggregate of these powers relate—

1. To cases arising in law or equity under the Constitution.
2. Under the laws of the United States.
3. Under treaties made, or to be made, by their authority.
4. To cases affecting ambassadors, other public ministers, and consuls.
5. To cases of admiralty and maritime jurisdiction.
6. To controversies to which the United States shall be a party.
7. To controversies between a state and citizens of another state.
8. To controversies between citizens of different states.
9. To controversies between citizens of the same state, claiming lands under grants of different states: And,
10. To controversies between a state or the citizens thereof, and foreign states, citizens or subjects.

Of these ten classes of jurisdiction, some are vested in the federal, concurrently with the state tribunals; others in the federal, exclusively of the state tribunals.

It is not *expressly* forbidden to the states to assume the cognizance of any one or all of them. For the judicial power of the United States is only to *extend* to the recited cases: And to *extend* the authority of one court to a description of persons or things, which should of course be embraced by another, had no such extension been made, cannot of itself deprive that other of its pre-existing rights.

The *nature* however, of some of these subjects, shuts out the jurisdiction of the state courts, as such, on the vital principles of the Union.

1. The first among these are cases of admiralty and maritime jurisdiction; terms, which, when thus applied, are nearly synonymous. They bear a technical meaning, well known throughout the United States, and uniform; being expressive of courts, copied from the same original. It belongs to them to decide all causes, arising wholly on the sea, and not within the precincts of any county, and to condemn all lawful prizes, in time of war.

(a) The open sea is a great high-way to all mankind, who have not surrendered by an acquiescence or a positive act, the privilege of navigating particular parts of it. In general, every nation ranks the cognizance of causes, wholly arising there, among the attributes of independence; and to none is it denied, where the litigants, or the litigated property is within its territory. If therefore it were supposed, that any one of the now United States had never entered into the Union, to it would this prerogative have appertained. But being a party to the federal compact, each state has resigned it to the federal government. It has been thus resigned;

1. Because that government only, as possessing the rights of remonstrance, marque, reprisal and war, can protect the citizens of the United States from hostilities, in their daily intercourse with rival adventurers on that element.

2. Because a concurrence of jurisdiction might either involve the confederacy in war, contrary to its will, or subject it to a grievous reparation of some injury.

3. Because the power given to Congress by the Constitution, to define and punish piracies and felonies on the high seas, and offences against the law of nations, comprehends the whole of criminal sea law, and warrants that body to assign to the federal courts alone an exclusive jurisdiction therein: And,

Lastly. 4. Because under the foregoing powers, and the power of Congress to regulate commerce, and to make rules concerning captures on water, the pure marine law, properly so called, can be dispensed by those courts only which derive an authority over it from the United States.

(b) For the same reason is the cognizance of prizes in time of war lodged in the federal courts exclusively. But it is not pretended from hence that the United States are absolved from the obligation of neutrality.

(c) Two other denominations of cases have been added to the admiralty and maritime courts; to wit—offences on water against the revenue laws, and claims for specific satisfaction on the body of a vessel, as for mariners' wages, &c. But neither of these is of necessity appropriated to the admiralty. It is true that a jurisdiction over the former must be deduced from Congress, and that they will doubtless deposit it in their own tribunals; and most probably in the admiralty. In the latter, the state legislatures may establish a jurisdiction reaching the vessel itself.

2. If the United States, as far as they can be a party defendant, should happen to be so, their own courts can alone judge them. To drag a confederate before the courts of one of its members, would reverse the plain dictates of order; hazard the most critical interests of the union upon the pleasure of a single state; and enable every individual state under the pretext of a forensic sentence, to arrogate the general sovereignty.

3. In like manner, as far as a particular state can be a party defendant, a sister state cannot be her judge. Were the states of America unconfederated,



they would be as free from mutual controul as other disjointed nations. Nor does the federal compact narrow this exemption ; but confirms it, by establishing a common arbiter in the federal judiciary, whose constitutional authority may administer redress.

It deserves however to be remarked in this place, that these ideas are not inconsistent with the right of the states separately, or of the United States collectively, to resort to the state courts as *plaintiffs* ; nor yet with the right of the states separately to open their own courts for suits against themselves.

4. In disputes arising upon the grants of land by different states, the contest must turn upon one of two questions ; in which state the land lies ; or whether lands, confessedly within one state, may not, by virtue of some act, be claimed by the grantee of another. It would be the extreme of presumption for a sister state to affect a jurisdiction in this case : and more especially ought the granting and claiming states to keep aloof from the decision, it being the cause of both.

5. If crimes and offences be punishable by that authority alone, against which they are committed ; those created by the Constitution, or by Congress, resort to the federal judiciary only. If on the other hand it were allowed, that Congress might transfer the cognizance of these cases to the state courts, until that transfer it cannot be theirs.

6. Rights too created by Congress, may have a special remedy given to them in the federal courts ; and to them ought therefore to be restricted.

We are then led to conclude, that the judiciary of the United States have exclusive jurisdiction in the following cases.

1. In those of strict admiralty and maritime jurisdiction.
2. Where the United States are a party defendant.
3. Where a particular state is a party defendant.
4. Where lands are claimed under grants of different states.
5. In treason, as described by the constitution, and other crimes and offences created by the laws of the United States, but not consigned to the state tribunals.
6. In rights created by a law of the United States, and having a special remedy given to them in the federal courts.

In all the other cases, to which the judicial power of the United States *extends*, a concurrent jurisdiction is presumed ; provided they be not mingled with others coming within any of the six foregoing descriptions. By this standard, which, if found, may by its adoption maintain the harmony of the federal and state judiciaries, the Attorney-General has tried the jurisdictions, marked out by law. But with a reluctance and distrust of his own judgment, which nothing less than a sense of duty could overcome, he begs leave to ask,

1. How far the state courts ought to be prohibited, as they now are from a jurisdiction in suits against consuls or vice-consuls, as such, or against a state, sued with its own permission, in its own courts, or in suits where a state is plaintiff ? And,

2. Whether the restrictions on the state courts ought not to be increased, so as to bind all the six cases above mentioned ?

On a farther prosecution of the cases acknowledged to be of concurrent jurisdiction, it appears, that a writ of error may issue from the supreme court of the United States to a final judgment or decree rendered in any suit by the highest state court of law or equity, in the nine following cases :

Where is drawn in question,

1. The validity of a treaty of the United States ;
2. Or of a statute of the United States ;
3. Or of an authority exercised under the United States :

} and the decision  
on is against  
their validity.

Sec. 9. 13.

II. Re-examination of state decrees.

Sec. 25.

Or where is drawn in question,

1. The validity of a statute of any state on the ground of being repugnant to the Constitution, treaties, or laws of the United States ;
2. Or of an authority exercised under any state upon like grounds :

} and the decision is in favor of such their validity.

Or where is drawn in question,

1. The construction of any clause of the Constitution of the United States ;
2. Or of a treaty of the United States ;
3. Or of a statute of the United States ;
4. Or of a commission held under the United States :

} and the decision is against the title, right, privilege or exemption, specially set up, or claimed by either party under such clause of the said Constitution, treaty, statute, or commission.

That the avenue to the federal courts ought, in these instances, to be unobstructed is manifest. But in what stage, and by what form shall their interposition be prayed ? There are perhaps but two modes ; one of which is to convert the supreme court of the United States into an appellate tribunal over the supreme courts of the several states ; the other to permit a removal by certiorari before trial.

The Attorney-General will not decide how far the arguments of those, who do not assent to the first, merit attention. But he is constrained to lay them before the House.

It has been conceded, that when the Constitution delegates to the supreme court "*appellate jurisdiction*," it uses a very broad expression ; which, if understood in its literal latitude, tolerates the first expedient. But on the other hand it has been asserted,

1. That this phrase must be pressed close to the matter of the third article of the Constitution, which is the *judicial power of the United States*, without blending state courts.

2. That this species of construction is not unfrequent ; nay, in another part of the article it is drawn into action. For without it, the direction, that all crimes, except in cases of impeachment, shall be tried by a jury, might intrude farther into the police of a state, than has been ever yet contended.

3. That as the state courts did not rely for their concurrent jurisdiction upon any cession in the Constitution, the special provision, that the supreme court should have *original jurisdiction* in four cases, was designed to prevent the inferior courts of the United States from having the sole original jurisdiction in those cases : and that *original* and *appellate* being correlative in their signification, the latter must also bespeak some relation between the supreme and inferior courts of the United States alone.

4. That in cases of admiralty and maritime jurisdiction, and some others, with which a state cannot intermeddle, the appellate jurisdiction must operate on the decrees of the inferior federal courts only : and that the interpretation of one passage in the article, being thus far clear, furnishes a key by which to expound the others : And,

5. That a concurrence of jurisdiction so strongly implies coequality, that nothing ought to arraign it, except a very explicit declaration, or at least a violent necessity to the contrary.

But let these arguments be passed over without further notice.

Does justice intitle the plaintiff to the first mode ? When he institutes his suit, he has the choice of the state and federal courts. He elects the former, and to that election he ought to adhere.

Does justice intitle a defendant to it ? Certainly not ; should he be free to withdraw the cause by a certiorari at any time before trial, from the state court. For if with this privilege he proceeds without a murmur through the



whole length of the state courts, ought he to catch a new chance from the federal courts? Have not both plaintiff and defendant thus acquiescing, virtually chosen their own judges?

Again. Let supposition itself be tortured: let the highest state courts, although sworn to support the Constitution, invalidate a treaty, a statute or an authority of the United States.

1. Such a decree could not invalidate them, nor impair the right of the lowest federal court to ratify them.

2. It would not disturb the tranquility of the United States. For if even aliens were the parties, the remonstrances of their prince might be repelled by shewing that they favored the state jurisdiction, by waiving the privilege of going into the federal courts.

3. Nor yet would the honor of the United States be sullied. For if it has not occurred, it may be conceived, that courts, whose jurisdiction is straitened in value, but whose decrees up to that value are final, may be refractory against a law, without diminishing the real dignity of government. Judicial uniformity is surely a public good, but its price may be too great if it can be purchased only by cherishing a power, which to say no more, cannot be incontrovertibly proved.

4. At any rate, unless a party shall forsake the ordinary maxims of prudence, the hostility of the supreme state courts (if hostility be possible) will be displayed but once. For the remembrance of an adverse decision or an adverse temper in those courts, will inevitably proclaim the federal courts as the asylum to federal interests.

From these considerations, the second mode by certiorari is perhaps eligible. But it may be said, that even this process argues something more than a concurrence of jurisdiction in the federal courts; and that if it be improper to tie a defendant to a state court against his will, it is equally so to force a plaintiff to a federal court against *his* will. To this let it be answered,

1. That the judicial power of the United States was established to prevent suitors in certain cases from being obliged to submit entirely to the state courts; and that a material objection to the re-examination of a final decree, is founded upon both parties, voluntarily and cheerfully devoting themselves to the state courts: And

2. That a concurrent jurisdiction would be a heavy oppression to a defendant, if he cannot depart from a state court, while the plaintiff may arrest him by a state or federal writ.

A third alteration, which the Attorney-General cannot forbear to suggest, is, that the judges of the supreme court shall cease to be judges of the circuit courts.

It is obvious that the inferior courts ought to be distinct bodies from the supreme courts. But how far it may confound these two species of courts, to suffer the judges of the supreme to hold seats on the circuit bench, he declines the discussion, and circumscribes his reflections within the pale of expediency only.

1. Those who pronounce the law of the land without appeal, ought to be pre-eminent in most endowments of the mind. Survey the functions of a judge of the supreme court. He must be a master of the common law in all its divisions, a chancellor, a civilian, a federal jurist, and skilled in the laws of each state. To expect that in future times this assemblage of talents will be ready, without farther study, for the national service, is to confide too largely in the public fortune. Most vacancies on the bench will be supplied by professional men, who perhaps have been too much animated by the contentions of the bar, deliberately to explore this extensive range of science. In a great mea-

III. Judges of the supreme court made judges of the circuit courts.

sure then, the supreme judges will form themselves after their nomination. But what leisure remains from their itinerant dispensation of justice? Sum up all the fragments of their time, hold their fatigue at naught, and let them bid adieu to all domestic concerns, still the average term of a life, already advanced, will be too short for any important proficiency.

2. The detaching of the judges to different circuits, defeats the benefit of an unprejudiced consultation. The delivery of a solemn opinion in court, commits them; and should a judgment rendered by two, be erroneous, will they meet their four brethren unbiassed? May not human nature, thus trammelled, struggle too long against conviction? And how few would erect a monument to their candor, at the expense of their reputation for firmness and discernment?

3. Jealousy among the members of a court is always an evil; and its malignity would be double, should it creep into the supreme court, obscure the discovery of right, and weaken that respect which the public welfare seeks for their decrees. But this cannot be affirmed to be beyond the compass of events to men agitated by the constant scanning of the judicial conduct of each other.

If this should not happen, there is fresh danger on the other side; lest they should be restrained by delicacy and mutual tenderness, from probing without scruple, what had been done in the circuit courts. A schism of sentiment before a decision and after a free conference, is not esteemed harsh; but it is very painful to undertake to satisfy another, that in a public opinion already uttered, he has been in the wrong.

4. Situated as the United States are, many of the most weighty judiciary questions will be perfectly novel. These must be hurried off on the circuits, where necessary books are not to be had; or relinquished for argument before the next set of judges, who on their part may want books, and a calmer season for thought. So that a cause may be suspended until every judge shall have heard it.

5. To this separation of the supreme judges from the circuit service, some objections may be anticipated.

It may be urged,

1. That it will tend to impress the citizens of the United States favorably towards the general government, should the most distinguished judges visit every state: And,

2. That in one county, assizes are held with applause, by the very men who afterwards sit collectively, to review what may have been there transacted, and who are also consulted in the dernier resort.

1. The first objection is too vague. In its extent, it impugns all subordinate departments whatever; and ought therefore to be regarded no otherwise, than as it may be unopposed by inconveniences. Let it then be inquired, if none of the preceding do oppose.

Again: Will not the judges of the circuit courts be adequate to their stations?

The supreme judges themselves who ride the circuits, will (if indeed such a circumstance can be of much avail) be soon graduated in the public mind, in relation to the circuits; will soon be considered as circuit judges, and will not be often appreciated as supreme judges. When a dissatisfied party looks up to the highest tribunal for redress, he is told by the report of the world that in it every quality is centered necessary to justice. But how would his sanguine hopes be frustrated, if among six judges, two are most probably to repeat their former suffrages, or to vindicate them with strenuous ability; or if to avoid this, the wisdom of a third of the number must be laid aside?

2. The assize scheme will not be confronted by any impeachment of its merit; on the contrary, its merit is admitted, although perhaps it cannot safely be



the ground work of our reasoning on the judiciary of the United States, until we are assured that we have penetrated all the arcana of its operations. But there is a court of final jurisdiction, which by being ready to correct, incessantly admonishes all the subordinate courts to be circumspect. Equity itself too, being in different hands from the common law, is watchful over every departure from what is right.

When the judges of assize assist with their counsels in the last resort, they are not authoritative. Such of them as are members of the body, are so small in number, as to be compelled to rely on the strength and solidity of their judgments only, instead of their influence. Besides, the judges are enrolled in distinct corps; and this alone would be a kind of hostage for exertions in behalf of truth.

Where then is the similitude to the supreme court of the United States?

Should the judges of the supreme court become stationary, they will be able to execute reports of their own decisions, and thus promote uniformity through the whole judiciary of the United States. IV. Reports.

Reports may be traced up to a venerable antiquity. In England they were composed for centuries by prothonotaries of the court, at the charges of the crown: And ever since the patronage of government has retired, their utility has been universally avowed. In our own country too, labors like these have diffused a knowledge of the laws of particular states. And how valuable in point of authenticity and instruction, must reports be, from the supreme court?

But these are not the only advantages:

They announce the talents of the judges.

If the judge, whose reputation has raised him to office, shall be in the habit of delivering feeble opinions, these reports will first excite surprise, and afterwards a suspicion, which will terminate in a vigilance over his actions.

In a word, when by means of these reports, the sense of the supreme court shall be ascertained and followed in the inferior tribunals, much time and money will be saved to dissatisfied suitors, who might otherwise appeal.

A diversity of opinion has prevailed on the forms and modes, to be observed in causes of equity and of admiralty and maritime jurisdiction: Whether they are to be according to the mere civil law, unqualified by the usages of any modern nation, or under limitations?

V. Proceedings of equity and admiralty according to the civil law.

If the untempered severity of the Roman law is to predominate, the rights of property, and of personal liberty, are in jeopardy: Without exhibiting a tedious list of what are termed the substantial and accidental parts of a civil cause, let a few of the most obnoxious forms of the civil law be selected.

1. In scarcely any case, unless in that of a ne-exeat, is an arrest upon citation or subpoena, at the first institution of a chancery suit known in the United States. In the civil law it is otherwise.

2. One mode of executing a sentence is by putting the plaintiff into possession of all the defendant's estate, in order that he may pay himself: and the same may be the punishment of contumacy.

3. It is true that by practice a sequestration has grown into a chancery-process in the last stage of contempt. But by the civil law, the property in debate may be wrested from its possessor, when he has been guilty of no contempt, and may continue with the sequestrator, be the suit depending for any number of years whatsoever.

4. To what a height of insult and delay may not a dilatory exception to a judge be carried?

5. The oaths have not less singularity in them.

The suppletory oath is given by the judge to the plaintiff or defendant upon half proof being already made ; which being joined with the half proof supplies a sufficient quantum of proof.

The decisive oath is, where one of the litigants not being able to prove his accusation, offers to stand or fall by the oath of his adversary ; and the adversary is bound to accept it, or make the same proposal back again, under the penalty of condemnation.

The oath of calumny, is, where the plaintiff or defendant is required to swear, that he believes himself to be engaged in a just cause.

To these specimens, others might be added, equally exceptionable. But as they indicate the general spirit of the civil law, in its forms and modes, limitations of them ought to be searched for.

It cannot be denied, that the nation, whose jurisprudence is the source of our own, presents the best limitations ; and that they ought to be adopted, until better shall be devised. And better may certainly be prepared under the auspices of Congress.

VI One place for holding the district and circuit courts.

Congress evinced their anxiety that the administration of justice should be as convenient as possible, to the citizens of the United States, when they allotted alternate places for the sessions of the district and circuit courts. Although it may be doubted, whether it would not be more agreeable to the public to be summoned to some central spot, yet to reduce these places to one in each district, without cogent reasons, might awaken discontent. But such a risk may be encountered with safety, as it is defended by a fair prediction of the mischiefs which await the old plan.

1. Either the records, or copies of them, must travel with the courts. By the former step they would be always liable to loss or injury ; by the latter, the expense to clients would be greatly increased. It will not be enough to make up a scanty *non prius* roll only ; because the court which tries the cause, will enter judgment, and must therefore have the documents entire.

2. Generally speaking, two sets of lawyers will be retained. The same practitioners will not desert the more profitable business of the state courts, to attend two federal courts, widely distant from each other, and very probably interfering with the terms of the state courts : and if they do not ride with the judges, the prospect is equal, that a cause, the original writ of which is returnable in one place, may be ultimately heard at the other.

3. The original writs of suits will most commonly be returnable to the place nearest to the residence of the witnesses. But if they are to go to the more remote place, costs will be multiplied, and themselves put to additional trouble.

4. If a culprit should not be tried at the first session, and the judges cannot hold a special intermediate session, he must be transported in irons to the next place of session, or languish in gaol, until the court shall meet at the place of his confinement. And it will be very rare, that a special session can be holden by the judges of the supreme court at least, as their duty will hasten them to some other circuit, and from thence to the seat of government.

VII. Rules of decision.

1. It is conjectured that the common law was omitted among the rules of decision, as having been already the law of the United States. Most probably this will be seldom if ever controverted. But in one aspect the existence of the common law, as the law of the United States, is equivocal. For if the doctrines of the common law can be introduced into the federal courts, only by recurring to them for the explanation of the language, used in the laws of the United States, and of particular states ; or by the connection which the common law will have with most of the suits in the federal courts, as arising within some particular state : some parts of the common



law, which do not fall within either of these characters, will be estranged from our system.

To cut off then such altercation, is not unworthy the care of Congress.

2. But the common law not being totally without blemish, has been occasionally improved by statute. Is the wisdom of these improvements to be discarded? It is true indeed, that there ought to be a repugnance to naturalize the statute book of a foreign nation, even for a moment. But the fact is, that the United States have not yet had sufficient leisure to disengage themselves from it, by enacting a code for themselves. The time will come (perhaps it has already come) when such a work will be indispensable. But until it shall be completed, it will be far less disgraceful to accept, under proper restrictions, some part of our law from an alien volume, with which every state is well acquainted, and to which the people have been accustomed from their infant settlements, than abruptly to unhinge ancient legal tenets. And here the Attorney-General begs leave to conjecture, that if the two clauses, concerning the forfeiture of the penalty annexed to articles, &c. and concerning abatements, both of which have originated from statutes, should alone be inserted, every other part of the statutes, would be excluded by construction; except where they are the laws of a particular state, and in cases belonging to that state.

These appear to be the capital desiderata. Other alterations will be proposed in the draught, which is now offered, in obedience to the second part of the order; namely, that a report be made of such provisions as may seem advisable.

## SECOND PART.

**T**HIS bill, although not formally divided into cardinal parts, is yet divisible into four. The first contains all that is peculiar to the organization of the district courts; the second, to that of the circuit courts; the third, to that of the supreme court; and the fourth, what is common to two, or the whole of them.

The constitution, the common law, and equity have shortened the detail. But in the progress of the draught, the alternative was always in view, either to make it immensely prolix, by re-enacting the necessary statutes, or to consider that those of a certain general nature would be specially adopted. For the Attorney-General repeats, that the chasm will be found distressing in practice without such adoption. The latter then was preferred, as being incapable of any fatal error. In the former too much might have been omitted without longer premeditation, and the very changes of language might generate confusion.

He therefore requests, that whensoever, on the perusal, any thing seems to be too slightly touched, or unnoticed, it should be enquired, in what manner the Constitution of the United States, equity, the common and statute law have provided for the case, and whether they have not provided sufficiently.

*A BILL for amending the several Acts concerning the JUDICIAL COURTS of the United States.*

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the United States shall be, and they are hereby divided into fifteen districts, to be limited and called as follows,

D

1. Division into districts.

to wit: One to consist of that part of the state of Massachusetts which lies easterly of the state of New-Hampshire, and to be called Maine district; one to consist of the state of New-Hampshire; and to be called New-Hampshire district; one to consist of the remaining part of the state of Massachusetts, and to be called Massachusetts district; one to consist of the state of Rhode-Island and Providence Plantations; one to consist of the state of Connecticut, and to be called Connecticut district; one to consist of the state of New-York, and to be called New-York district; one to consist of the state of New-Jersey, and to be called New-Jersey district; one to consist of the state of Pennsylvania, and to be called Pennsylvania district; one to consist of the state of Delaware, and to be called Delaware district; one to consist of the state of Maryland, and to be called Maryland district; one to consist of the state of Virginia, except that part called the district of Kentucky, and to be called Virginia district; one to consist of the district of Kentucky, and to be called Kentucky district; one to consist of the state of North-Carolina, and to be called North-Carolina district; one to consist of the state of South-Carolina, and to be called South-Carolina district; and one to consist of the state of Georgia, and to be called Georgia district. [Note 1.]

2. District courts and judges.

And be it further enacted, That there be a court called a district court in each of the aforesaid districts; that it shall consist of one judge, who shall reside in the district for the court of which he is, or shall be appointed, and shall be called a district judge; and that before he proceeds to execute the duties of his said office, he shall take the following oath or affirmation, to wit: "I, A. B. do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge of the district of according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God:"—Which oath or affirmation shall be administered by any one of the justices of the supreme court of the United States; any district judge of the United States; any judge or justice of the peace for the state forming the district; or the clerk of the district court: and a certificate thereof shall be recorded in the district court.

3 Sessions of the district courts.  
1. Stated.

And be it further enacted, That each district court shall hold two stated sessions in every year, at the times and places, and for the terms following, that is to say: [Note 2.]

2. Special.

That each district court shall also hold special sessions for the purposes herein after mentioned, at such times as the judge thereof shall appoint, and at the places following, that is to say:

Provide, as to the place and adjournment.

Provided always, That the said courts shall be holden in some public court-house, where the same can be obtained; and that it shall be lawful for the President of the United States, in vacation, or to the respective courts, if it shall be rendered necessary by any infectious disorder or other cause, to direct the sessions of the said courts, whether stated or special, to be holden at some more fit place within the said districts respectively, until the said cause shall be removed. [Note 3.]



And be it further enacted, That no state court shall take cognizance of, or exercise jurisdiction in any of the following cases, to wit :

1. Cases of admiralty, and maritime jurisdiction.
2. Controversies, to which the United States shall be a party defendant.
3. Controversies, to which a particular state shall be a party defendant ; except where a state may have authorized a suit to be brought against itself in its own courts.
4. Controversies for lands claimed under grants of different states.
5. Treason against the United States, and crimes and offences created by Congress, unless the cognizance thereof shall be vested by law in the said state courts, or state magistrates. And,
6. Rights created by Congress, and having a special remedy given to them in the federal courts. [Note 4.]

4. Exclusion of the state courts.

And be it further enacted, That each district court shall, under the regulations and restrictions hereinafter mentioned, have original jurisdiction of all cases in law and equity, arising—

5. Jurisdiction of the district courts.

1. Under the Constitution of the United States.
2. The laws of the United States : And,
3. Treaties made, or which shall be made under their authority.
4. Of all cases affecting ambassadors, and other public ministers being plaintiffs, or consuls or vice-consuls, being plaintiffs or defendants. [Note 5.]
5. Of all civil cases of admiralty and maritime jurisdiction.
6. Of piracies and felonies on the high seas.
7. Of crimes and offences created by Congress, arising within its proper district.
8. Of controversies upon rights created by Congress, and having a special remedy given thereto in the federal courts.
9. Of all controversies to which the United States shall be a party plaintiff.
10. Of all controversies between a state being plaintiff, and the citizens of another state.
11. Of all controversies between citizens of different states not claiming lands under the grants of different states.
12. And of all controversies between a state being plaintiff, and foreign citizens or subjects, or between the citizens of a state, and foreign citizens or subjects.

Provided always, and be it further enacted, That the aforesaid jurisdiction of the district courts shall be under the regulations and restrictions following, that is to say :

6. Regulations and restrictions of the district jurisdiction.

1. No person shall sue out any original process, or commence any original suit in a district court for the trial of any matter or thing of less value than dollars, on pain of having the same dismissed with costs ; except in cases of admiralty and maritime jurisdiction, and in offences against the revenue laws. [Note 6.]

2. No suit shall be brought or sustained in equity, in the said district courts, except in cases of fraud, accident, trust, and unconscionable hardship, or where the mode of proof, or the mode of relief at common law, be incompetent to the case of the complainant, or where persons, not resident in the United States, and having any estate or debts in the hands of another, resident within the district for which such court is held, shall, together with that other person, be made defendant ; and in the last mentioned case, the decree may subject such estate and debts to the demand of the complainant. [Note 7.]

3. The judge of a district court may issue writs of ne-exeat, returnable to the said court, against any person who is about to depart from any district.

and who may be liable to be sued in equity in the said district courts. The writs of ne-exeat, shall command the defendant to find sufficient security, in a sum to be expressed therein by the direction of the judge, that he will not depart the district without the leave of the court; and the plaintiff, or some responsible person in his behalf, shall, at the time of obtaining the writ, enter into bond with sufficient security, in the clerk's office of the district court, to answer all damages which may accrue to the defendant from the said writ.

4. Writs of injunction in equity, may be granted by the judge of a district court, to judgments of the said court at common law. But the plaintiff, or some responsible person in his behalf, shall, at the time of obtaining the said writ, enter into bond with sufficient security in the clerk's office of the district court, to answer damages at the rate of ten per centum, in case such injunction shall be dissolved. And no injunction in equity shall be granted by a district court to a judgment at law of a state court. [Note 8.]

5. The jurisdiction herein before given to the district courts over cases arising under the Constitution, the laws and treaties of the United States, shall not be construed to comprehend such cases in which the United States, or a particular state, shall be defendant. [Note 9.]

6. In all crimes and offences tried by any district court, the punishment for which, if consisting of stripes, imprisonment, or a fine, is left to the discretion of a jury or the court, the stripes shall not exceed thirty, nor the imprisonment six calendar months, nor the fine one hundred dollars. And whereforever, in any crime or offence, cognizable under the authority of the United States, the punishment by stripes, imprisonment or fine be expressly defined by law, and be greater than the number, the time; and the sum aforesaid, or whereforever the punishment shall affect life or limb, no district court shall exercise jurisdiction therein, unless the offender being actually in prison, shall, by petition to the said court, request it; and thereupon, if it shall appear to the said court that due notice and sufficient time have been given to the officers of the United States concerned, to prepare for the hearing, and that the circuit courts herein after mentioned, have not already had possession of the case, and that it would tend to expedite its decision, if the said district court should take cognizance of it, it shall be lawful for the said district court to hear and determine the same; but this restriction of the jurisdiction by this act given to the district courts, shall not be construed to extend to the district courts in the districts of Kentucky or Maine. [Note 10.]

7. No civil suit, being of a transitory nature only, shall be brought against an inhabitant of the United States, in any district court other than that of the district to which he belongs, unless process for the same cause shall have been first returned in the said district court, that he was not found, or he shall be absconding from his said district at the time of such suit being brought, or he shall be privy or a party in interest with a person resident within the district of the first mentioned court: And all suits brought contrary hereto, may be dismissed on motion.

8. No district court shall have cognizance of any suit, to recover the contents of any promissory note, or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents, if no assignment had been made, except in cases of foreign bills of exchange.

9. No person whatsoever shall, in any civil action or suit brought in a district court, be arrested or summoned in one district for trial in another, unless he be privy or a party in interest as aforesaid, in which case he may be summoned. [Note 11.]

10. Local actions shall be brought in the court of the district in which they arise.



11. No special session of a district court shall be held, but for civil causes of admiralty and maritime jurisdiction as aforesaid; and for seizures under the laws of impost, navigation or trade of the United States, and no such cause shall be heard at any stated session of the said court. [Note 12.]

And be it further enacted, That the judges of the district courts shall be conservators of the peace of the United States throughout their respective districts. [Note 13.]

7. Conservators of the peace.

And be it further enacted, That each district court, or the judge in vacation shall have power to appoint the clerk thereof, who, before he enters upon the execution of his office, shall take the following oath or affirmation, to be administered by the said judge: "I, A. B. being appointed clerk of the district of do solemnly swear, or affirm, that I will truly and faithfully enter and record all the orders, decrees, judgments, and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God:" but the words "So help me God," shall be omitted in all cases of affirmation. And the said clerk shall give bond to the United States in a reasonable penalty, with one surety at least, to be approved by the said district judge, conditioned faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and orders of the said court; which bond shall be recorded in the said district court, and shall not be void upon the first recovery, but may be put in suit, and prosecuted from time to time, at the costs and charges of any party or parties injured, until the whole sum of the penalty expressed in such bond shall be recovered thereon.

8. Clerks of the district courts.

And be it further enacted, That a marshal shall be appointed in and for each district for the term of four years; but shall be removable from office at pleasure. That before he enters on the duties of his office, he shall become bound to the United States before the judge of the said district, jointly and severally with two good and sufficient sureties, inhabitants, and freeholders in the said district, to be approved by the said district judge, in the penal sum of twenty thousand dollars, conditioned for the faithful discharge of the said office by himself and his deputies herein after mentioned; and shall moreover take before the said judge, the following oath or affirmation, omitting in the case of affirmation the words, "So help me God." "I, A. B. do solemnly swear, or affirm, that I will faithfully execute all lawful precepts directed to the marshal of the district of under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the marshal of the said district of

9. Marshals of the district courts.

during my continuance in the said office, and take only my lawful fees. So help me God." That the said marshal shall be adjudged to be an officer of the court of the district for which he shall be so appointed; shall attend the same accordingly; shall execute throughout the district all writs, precepts, summonses, and process issued under the authority of the United States, and directed to him; and shall have power to command all necessary assistance in the execution of his duty.

That it shall be also lawful for each marshal to appoint, as he shall see occasion, one or more deputies, who shall be removable from office by the district judge, and before they enter on the duties of their office, shall take before the district judge the oath or affirmation aforesaid, prescribed to be taken by the marshal, changing the word "marshal," where it occurs in the second place in the said oath or affirmation, to the words "the marshal's deputy;" that in case of the death of any marshal, his deputy or deputies shall continue in office, unless specially removed as aforesaid, and shall execute the same in the name of the deceased, until another marshal shall be duly qualified; that the executor or administrator of any deceased marshal shall have like remedy for the faults and

misfeasances in office of his deputy or deputies, which shall happen after the said marshal's death, as for those which may have happened in his life time.

That every marshal, and a deputy or deputies, when removed from office, or when the term for which the marshal was appointed, shall expire, shall have power notwithstanding to execute all such writs, precepts, summonses and process as may be in their hands respectively, at the time of such removal or expiration of office, unless the judge of the district court shall otherwise direct. [Note 14.]

That the marshal, or in case of his death his estate shall be answerable for the delivery to his successor of all prisoners who may be in his custody at the time of his death or removal, or the expiration of the term of his appointment, and for that purpose the marshal when living, or his deputies in case of his death, may retain such prisoners in custody until a successor shall be duly qualified, unless the judge of the district court shall otherwise direct. But nothing herein contained shall subject a marshal for any omission or misfeasance of the keepers of the state gaols.

That in all cases wherein the marshal or his deputy shall be interested, or shall not be an indifferent person, the writs, precepts, summonses and process shall be directed to such disinterested or indifferent person as the district judge may appoint; and the person so appointed, is hereby authorized to execute and return the same.

That the bond so to be given as aforesaid by each marshal, shall be forfeited, not only by the defaults and misfeasances in office of himself or his deputy or deputies in his life time, but also for the defaults and misfeasances of a deputy or deputies after his death in the cases aforesaid; shall be recorded in the said district court; and shall not be void upon the first recovery, but may be put in suit, and prosecuted from time to time, by and at the costs and charges of any party or parties injured, until the whole sum of the penalty expressed in such bond shall be recovered thereon.

And that the said marshal shall be liable on motion, after ten days previous notice, to judgment in his district court; and execution, for monies received by himself or his deputies, by virtue of their offices, and not duly paid to the person intitled thereto, upon application for the same.

10. Fees of  
clerks and mar-  
shals in the dis-  
tricts

And be it further enacted, That until it shall be otherwise provided by law, the rates of fees (except the fees to judges) and the allowances to witnesses, shall be the same in the district courts, as in similar cases in the supreme court in the last resort, of the state of which the district consists; and for the services of the clerks and marshals in cases which are unlike to those in the said supreme court, a reasonable compensation shall be paid by the parties, to be determined by the district courts, according to equity and the nature of the case; that all the said fees and compensations not received in cash, shall be collected by the marshal or his deputies, according to the laws of the state for collecting such fees, and shall be accounted for to the said district courts at every session, when an entry shall be made of the sums appearing to have accrued, a copy of which shall be transmitted by the judge to the circuit courts, for the purposes herein after mentioned.

11. Adjourn-  
ment of district  
courts.

And be it further enacted, That there shall be no discontinuance of any suit, process, matter or thing returnable to, or depending in any district court, although a judge shall not have been appointed to a vacancy, or the judge shall fail to attend at the commencement, or any other day of a session; but the judge may at the commencement of a session, by a written order, direct the marshal of the district to adjourn the court from day to day, for three days successively, and if he shall not attend on the fourth, or having attended one day, shall fail to attend on a subsequent day of a session, the court shall stand adjourned to the court in course.



And be it further enacted; That such writs, summonses, and other process, shall be issued from the several district courts for the commencement and prosecution of any civil action, suit or matter therein; and that the forms and modes of proceeding in conducting the same to a trial or hearing shall be such as the supreme court, according to the regulations herein after provided shall direct. But until directions shall be so given by the supreme court, and in cases not herein otherwise provided for, the writs, summonses, process, forms and modes aforesaid, shall be in cases at common law, as nearly as may be according to the practice of the highest state court of common law in each district, having original and general jurisdiction; and in cases in equity, according to the practice of the highest state court of equity in each district, having original and general jurisdiction, and where no such court of equity exists in any state, the district court shall proceed in equity, according to the forms, modes, rules and usages which belong to a court of equity, as contradistinguished from a court of common law; and in cases of admiralty, the district courts shall proceed according to the practice of the admiralty, properly so called: and every district judge shall moreover have the same power to issue writs of habeas corpus, returnable in vacation before himself, as in session returnable to the court.

12. Proceedings in the district courts.

And be it further enacted, That it shall be lawful for each district judge, for good cause shewn, to direct appearance-bail to be required; and for every district court, upon like cause, to require special bail: that a plaintiff issuing a capias, may also obtain an indorsement thereon from the clerk, requiring appearance-bail, upon lodging with the said clerk an affidavit, that the defendant from whom bail is so required, is, as far as the plaintiff knows or believes, not a resident within the United States, or that a writ has been returned in the same case to the court of the district in which he resides, and that the defendant was not found there, and that the defendant is indebted to the plaintiff to the amount of \_\_\_\_\_ or detains personal property from him to a like amount; and shall moreover give in the clerk's office, bond with sufficient surety to the defendant, in a reasonable penalty, conditioned to answer all damages which may accrue to the defendant, if it should thereafter appear, that bail has been thus required for the sake of vexation.

13. Bail in the district courts.

That the several district courts may appoint proper persons for taking special bail; who shall without delay transmit the recognizances of bail to the clerks of the said courts.

That the several marshals and their deputies, shall take bail bonds for appearances; and shall transmit them without delay to the clerks of their respective courts.

That if the sufficiency of bail be objected to, reasonable notice of such objection shall be given to the marshal or the deputy taking such bail, before a motion shall be made concerning it: that if upon a motion before the court, the bail be adjudged insufficient, the marshal shall be answerable therefor; Provided always, that it shall be a justification of the marshal, if an affidavit shall have been made previous to the acceptance of the bail, verifying the sufficiency thereof; unless it can be proved, that the said marshal, or the deputy who took the same, had good reason to suspect such sufficiency.

And that the special bail may surrender the principal either before or after judgment, to the marshal or his deputies belonging to the court in which the suit shall be brought, and may thereby discharge himself. And if the principal cannot give other special bail, he shall be committed. [Note 15.]

And be it further enacted, That the executions to be issued from the district courts of the United States, shall be elegit, capias ad satisfaciendum, fieri facias, and levari facias: that the return days thereof shall be appointed by the district courts respectively: that there shall be the space of \_\_\_\_\_ between the date

14 Executions from the district courts.

of the executions, and the return days : Provided always, That when judgment shall be entered in any district court, in a civil action, it shall be lawful for the said court to stay the execution for forty-two days from the time of entering the judgment. [Note 16.]

15. Appeals and writs of error on the judgments of the district courts.

And be it further enacted, That from every final decree rendered by any district court (except those of Kentucky and Maine) in the exercise of its admiralty and maritime and equity jurisdiction, and in cases of seizure under the laws of impost, navigation or trade of the United States, an appeal shall be allowed to the court of the circuit in which the district lies; and on all other final judgments rendered by the said district courts, a writ of error may be instituted in the said circuit court: And appeals and writs of error may in like manner be instituted in the supreme court of the United States, on the final decrees or judgments of the district courts of Kentucky or Maine. But all such appeals and writs of error shall be subject to the rules and regulations herein after provided; and it shall be also the duty of the said district courts, in suits in equity, and of admiralty and maritime jurisdiction, to cause the facts on which they found their sentence or decree, fully to appear upon the record, by inserting the depositions of the witnesses sworn in the cause, and the exhibits therein, at large. [Note 17.]

16. Division into circuits.

And be it further enacted, That the districts aforesaid, except those of Kentucky and Maine, shall be divided into three circuits, and shall be called the Eastern, the Middle, and the Southern Circuit: that the Eastern Circuit shall consist of the districts of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, and New-York; that the Middle Circuit shall consist of the districts of New-Jersey, Pennsylvania, Delaware, Maryland, and Virginia; and that the Southern Circuit shall consist of the districts of North-Carolina, South-Carolina, and Georgia.

17. Circuit courts; days; terms.

And be it further enacted, That there shall be a court, called a circuit court in each of the aforementioned circuits, which shall be holden in each district of the said circuits twice in every year, on the following days; to wit:

That the said circuit courts shall also have power to hold sessions for the trial of criminal causes at any other time at their discretion, or the discretion of the supreme court; and that the terms during which the said circuit courts shall continue to sit at their two stated sessions aforesaid, shall be: juridical days, unless the business ready for trial, shall be sooner dispatched; in which case, the court shall be adjourned to the court in course. [Note 18.]

18. Places for holding the circuit courts.

And be it further enacted, That the places for holding the said circuit courts in the districts of the several circuits aforesaid, shall be as follow:

Provided always, That the said circuit courts shall be holden in some public court house, where the same can be obtained; and that it shall be lawful for the President of the United States, in vacation, or to the respective courts, if it shall be rendered necessary by any infectious disorder, or other cause, to direct the sessions of the said courts to be holden at some more fit place within the said districts respectively, until the said cause shall be removed.

19. Judges of the circuit courts.

And be it further enacted, That the circuit courts aforesaid, shall consist of the judges of the district courts comprehended within the said circuits respectively: that before they proceed to execute the duties of this office, they shall



take, as judges of the circuit courts, the oath or affirmation, *mutatis mutandis*, herein before prescribed to them, as district judges, to be administered by any justice of the supreme court of the United States, any district judge of the United States, within his proper district, or any judge or justice of the peace for the state belonging to the circuit: that a certificate thereof shall be recorded in the circuit court; and that any three of the district judges in the eastern and middle circuits; and any two of the district judges in the southern circuit shall constitute a quorum: Provided that no district judge shall give a vote in any appeal or writ of error brought to reverse his own decision; but he may assign the reasons of such decision. [Note 19.]

And be it further enacted, That the circuit courts aforesaid, shall, under the regulations and restrictions hereinafter mentioned, have original jurisdiction of all cases in law and equity arising

1. Under the Constitution of the United States.
2. The laws of the United States.
3. And treaties made, or which shall be made under their authority.
4. Of all cases affecting ambassadors and other public ministers, being plaintiffs, or consuls or vice-consuls, being plaintiffs or defendants.
5. Of all controversies in which the United States shall be a party.
6. Of all controversies between a state, being plaintiff, and the citizens of another state. [Note 20.]
7. Of all controversies between citizens of different states.
8. Of all controversies between citizens of the same state, claiming lands under grants of different states.
9. Of all controversies between a state, being plaintiff, or the citizens thereof, and foreign states, citizens or subjects.
10. Of piracies and felonies committed on the high seas.
11. Of crimes and offences created by Congress, arising within their respective circuits: And
12. Of controversies arising upon rights created by Congress, and having a special remedy given thereto in the federal courts.

That the said circuit courts shall also have appellate jurisdiction over the district courts, under the regulations and restrictions hereinafter provided, and may issue writs of prohibition to the circuit courts, when proceeding as courts of admiralty and maritime jurisdiction, as well as writs of consultation; writs of mandamus, in cases warranted by the principles and usages of law; and under the authority of the United States; and also writs of certiorari to the district or state courts, according to the rules herein after prescribed.

Provided always, and be it further enacted, That the aforesaid jurisdiction of the circuit courts shall be under the regulations and restrictions following; that is to say:

1. No person shall sue out any original process, or commence any original suit in a circuit court, for the trial of any matter or thing of less value than dollars, on pain of having the same dismissed with costs.
2. No suit shall be brought or sustained in equity in the said circuit courts, except in cases of fraud, accident, trust, or unconscionable hardship, or where the mode of proof, or the mode of relief at common law, be incompetent to the case of the complainant, or where persons not resident in the United States, and having any estate or debts in the hands of another person resident within the district in which such circuit court is held, shall, together with that other person, be made defendant: and in the last mentioned case, the decree may subject such estate and debts to the demand of the complainant.
3. The several circuit courts, and any judge thereof, may issue writs of *ne-exeat*, returnable to the said courts, against any person who is about to depart from the district, and who may be liable to be sued in equity in the said circuit

20. Jurisdiction of the circuit courts.

1. Original.

2. Appellate.

21. Regulations and restrictions of the circuit jurisdiction.

courts respectively. The writs of ne-exeat shall command the defendant to give sufficient security in a sum to be expressed therein by the direction of the court or judge, that he will not go out of the said district, without leave of the said court; and the plaintiff, or some responsible person in his behalf, shall, at the time of obtaining the writ, enter into bond, with sufficient security, in the clerk's office, of the circuit court, to answer all damages which may accrue to the defendant from the said writ.

4. Writs of injunction in equity may be granted by the several circuit courts, or any judge thereof, to judgments of the said courts respectively at common law, or to judgments of common law at any district court within their respective circuits: but the plaintiff, or some responsible person in his behalf, shall, at the time of obtaining the said writ, enter into bond, with sufficient security, in the clerk's office of the circuit court, to answer damages at the rate of ten per centum, in case such injunction shall be dissolved: and no injunction in equity shall be granted by a circuit court to a judgment at law of a state court.

5. The jurisdiction herein before given to the circuit courts over cases arising under the Constitution, the laws and treaties of the United States, shall not be construed to comprehend such cases in which a particular state shall be defended. [Note 20.]

6. No civil suit, being of a transitory nature only, shall be brought against an inhabitant of the United States, in any circuit court other than that which shall be holden in the district to which he belongs, unless process for the same cause shall have been first returned in the said circuit court, so to be holden, that he was not found, or he shall be absconding from his said district, at the time of such suit being brought; or he shall be a privy or party in interest with a person resident in a district within the circuit: and all suits brought contra-hereto, may be dismissed on motion.

7. No circuit court shall have cognizance of any suit to recover the contents of any promissory note, or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court, to recover the said contents, if no assignment had been made, except in cases of foreign bills of exchange; and on a change of the venue herein after mentioned.

8. No person whatsoever, shall in any civil action or suit brought in a circuit court, be arrested or summoned in one district for trial in another, unless he be a privy or party in interest as aforesaid, or the venue be changed, as is herein after mentioned; in which case he may be summoned.

9. Local actions shall be brought in the circuit court to be holden in the district in which they arise.

22. Conservators of the peace within the circuit. And be it further enacted, That the judges of the circuit court shall be conservators of the peace of the United States throughout their respective circuits.

23. Clerks of the circuit courts.

And be it further enacted, That the clerks of the district courts shall be also clerks of the circuit courts, appointed to be holden in their respective districts: that they shall take as clerks of the circuit courts, an oath or affirmation of office, similar to that prescribed to them as district clerks; which oath or affirmation shall be administered by any justice or judge of the United States; and a certificate of the taking of which shall be recorded in the circuit court; and that the bond and surety given by them as clerks of the district courts respectively, shall stand and enure for their good conduct as clerks of the circuit courts.

24. Duty of marshals in the circuit courts.

And be it further enacted, That the marshals of the districts aforesaid, shall be adjudged to be officers of the circuit courts appointed to be holden in their respective districts, and shall attend the same accordingly; that the said deputies shall be removable from office by the circuit courts, while sitting in the districts to which the deputy or deputies so removed, belong; and that the said marshals and their deputies shall be bound to perform, throughout their respective di-



stricts, the same duties in relation to the business of the circuit courts sitting in their districts, as they ought by virtue of this act to perform in relation to the business of their district courts.

And be it further enacted, That until it shall be otherwise provided by law, the fees and compensations to the clerks and marshals, and the allowances to witnesses, shall be the same in the circuit, as in the district courts; that they shall be collected and accounted for to the circuit courts respectively, in the same manner as is prescribed in the case of the district courts; that the circuit courts, shall, once in every year, determine upon some reasonable satisfaction to be made to the clerks and marshals within their circuits, in consideration of their offices; that they shall thereupon enter upon record what sum, not exceeding <sup>25. Fees of the clerks and marshals.</sup> dollars to a clerk, nor dollars to a marshal, in addition to the emoluments arising from the district and circuit business aforesaid, they ought to receive; and the same shall be paid accordingly at the treasury of the United States. [Note 21.]

And be it further enacted, That there shall be no discontinuance of any suit, process, matter or thing returnable to, or depending in, any circuit court, although a quorum of judges shall fail to attend at the commencement, or any other day of any session: but if a majority of them shall fail to attend at the commencement of any session, the marshal of the district may adjourn the court from day to day for three days successively; and if a quorum shall not attend on the fourth, or having attended one day, shall fail to attend on a subsequent day of a session, the court shall stand adjourned to the court in course. <sup>26. Adjournment.</sup>

And be it further enacted, That such writs, summonses, and other processes, shall be issued from the several circuit courts, for the commencement and prosecution of any civil action, suit, or matter therein; and that the forms and modes of proceeding in conducting the same to a trial or hearing, shall be such as the supreme court, according to the regulations herein after provided, shall direct. But until directions shall be so given by the supreme court, the Attorney-General shall be summoned, where the United States are defendant; and in other cases not herein otherwise provided for, the writs, summonses, processes, forms, and modes aforesaid, shall be in cases at common law, as nearly as may be, according to the practice of the highest state court of common law in each district where the circuit courts shall sit, having original and general jurisdiction; and in cases in equity, according to the highest state court of equity in such district, having original and general jurisdiction; and where no court of equity exists in any state, the circuit court in such state shall proceed in equity, according to the forms, modes, rules, and usages which belong to a court of equity, as contradistinguished from a court of common law; and in cases of admiralty, the district courts shall proceed according to the practice of the admiralty, properly so called; and every circuit judge shall moreover have the same power to issue writs of *habeas corpus*, returnable in vacation before himself, as a circuit judge, or before any other judge of his circuit, who shall happen to be within the district, as the circuit court has to issue such writs returnable to the court. <sup>27. Proceedings.</sup>

And be it further enacted, That the power of the circuit judges, as to appearance-bail, and of the circuit courts as to special bail and the appointment of persons for taking the same, and the right of the plaintiff to require bail, and all other matters and things concerning bail, shall be the same, and shall be governed by the same rules as are herein before prescribed concerning bail in the district courts. <sup>28. Bail in the circuit courts.</sup>

And be it further enacted, That the executions to be issued from the circuit courts shall be the same, as those to be issued from the district courts; that the return days shall be appointed by the circuit courts in like manner; and execution may be stayed for the same time, as in the district courts. But it shall be lawful for a circuit court, for good cause, to direct executions to be issued <sup>29. Executions in the circuit courts.</sup>

on judgments obtained in a district court, within its circuit, to any other district within the same.

30. Amenable-  
bility of the  
circuit courts to  
the supreme  
court. And be it further enacted, That upon any final decree or judgment, rendered by a circuit court, an appeal or writ of error may be brought in the supreme court of the United States, as herein after is provided ; and that it shall be the duty of the circuit courts, in causes in equity, to cause the facts on which they found their decree, fully to appear upon the record by inserting the depositions of the witnesses sworn in the cause, and the exhibits therein at large.

31. Supreme  
court.  
Judges and  
precedence. And be it further enacted, That the supreme court of the United States shall consist, as at present, of a chief justice, and five associate justices, any four of whom shall be a quorum : that the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear date on the same day, according to their respective ages.

32. Oath of  
justices of the  
supreme court. And be it further enacted, That the justices of the supreme court, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit ; " I, A. B. do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God ;" omitting in the case of an affirmation, the words " So help me God ;" which oath or affirmation shall be administered by any justice or judge of the United States, or any clerk of the district or circuit court ; and a certificate of the taking of which shall be recorded in the supreme court.

33. Sessions  
and places. And be it further enacted, That the supreme court shall sit at the seat of government four times in every year, to wit ; on the first Monday in the months of that each term shall continue for the space of juridical days, unless the bu- siness depending before the said court shall be sooner dispatched : but the said court shall have power to prolong their session beyond the term, for expediting the business depending before them, if they shall see cause.

34. Jurisdic-  
tion of the su-  
preme court. And be it further enacted, That the supreme court shall have original jurisdiction,

1. In all cases affecting ambassadors, other public ministers and consuls : And,
2. In those which a state shall be a party.

35. Appellate. That in the cases of which the circuit courts aforesaid, and the district courts of Kentucky and Maine have cognizance, the supreme court shall have appellate jurisdiction, under the regulations of appeals and writs of error herein after mentioned : that the supreme court shall have power to issue writs of mandamus according to law, and writs of *certiorari* to the circuit and state courts, according to the rules herein after mentioned, to direct the writs, summonses, process, forms and modes of proceeding to be issued, observed and pursued by the said supreme court, and the district and circuit courts, taking care that a letter missive, signed by the chief justice, shall be addressed, where a state is defendant, to the executive thereof, and that the Attorney-General of the United States, where the United States are defendant, shall be summoned, and for good cause shewn, to change the venue in any suit depending in a circuit court, so as to cause the same to be tried in any other circuit court in the same circuit. [Note 22.]

35. Conser-  
vators of the  
peace within  
the United  
States. And be it further enacted, That the justices of the supreme court, shall be conservators of the peace of the United States, throughout the same.

36. Reports. And be it further enacted, That the justices of the supreme court shall, on the conclusion of any appeal or writ of error, state the whole merits of the case, the questions arising therefrom, the opinions of the court thereupon, and a summary of the reasons in support of those opinions ; all which shall at the



end of each term, be entered in a book to be kept for that purpose, and copies shall be transmitted by the clerk to each district and circuit court: that it shall be the duty of each justice of the supreme court, present at the hearing of any appeal or writ of error, and differing from a majority of the court, to deliver his opinion in writing, to be entered as aforesaid: and that each judge shall deliver his opinion in open court.

And be it further enacted, That as soon as the justices of the supreme court shall have established a system of practice as aforesaid, it shall be the duty of the Attorney-General to prepare and report to Congress, a table of fees and costs.

And be it further enacted, That the supreme court, or any four justices thereof, in vacation, shall have power to appoint a clerk for the said court, who shall, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court, or the justices appointing him, to the United States, in the sum of two thousand dollars, conditioned faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and orders of the said court; which bond shall be recorded in the said court, and shall not be void upon the first recovery, but may be put in suit and prosecuted from time to time, at the costs and charges of any party or parties injured, until the whole sum of the penalty expressed in such bond shall be recovered thereon. And the said clerk shall also take an oath or affirmation of office, similar to that prescribed in the case of a district clerk, *mutatis mutandis*; which oath or affirmation shall be administered by any judge of the supreme court, and a certificate of the taking of which shall be recorded in the said court. And for his services, the clerk of the supreme court shall receive such allowance as the said court shall adjudge, not exceeding dollars per annum, to be paid at the treasury of the United States.

And be it further enacted, That the marshal of the district in which the supreme court shall sit, shall be adjudged to be an officer of the said court, and shall attend the same accordingly; that all the said marshals and their deputies shall be bound to perform throughout their district, the same duties in relation to the business of the supreme court, as they ought, by virtue of this act, to perform in relation to the business of their district courts; and the marshal attending the said court shall receive a reasonable allowance per day for such attendance, to be adjudged and certified by the said court.

And be it further enacted, That there shall be no discontinuance of any suit, process, matter or thing returnable to, or depending in the supreme court, although a quorum of justices shall fail to attend at the commencement, or any other day of any session; but if a majority of them shall fail to attend at the commencement of any session, the marshal of the district may adjourn the court from day to day for three days successively; and if a quorum shall not attend on the fourth, or having attended one day, shall fail to attend on a subsequent day of a session, the court shall stand adjourned to the court in course.

And be it further enacted, That no bail shall be required in any case depending before the supreme court, without the special order of the court. [Note 23.]

And be it further enacted, That the executions to be issued from the supreme court shall be the same as those to be issued from the circuit and district courts: that the return days shall be appointed by the supreme court in like manner; and that the supreme court may, for good cause, direct executions to be issued on judgments obtained in a district or circuit court, to any other district or circuit.

And be it further enacted, That it shall be lawful for either party in any action or suit, in law or equity, depending in any district court, to petition a judge of the circuit court of the circuit in which such district lies, to remove the same to the said circuit court to be holden in the said district: and if it shall appear to the satisfaction of the said judge, that there is good cause for a re-

removal, and that the circuit court hath jurisdiction thereof, the said judge may direct the clerk to issue a certiorari for that purpose. But the said judge shall, if he see cause, require notice to be given of the said petition to the adverse party, his agent or attorney, before he decides thereon; and shall be first satisfied, where the plaintiff petitions for a removal, that the cause assigned for removal has arisen since the suit brought, or was unknown to him at the time of bringing the same: And the said circuit court may at any time, for good cause, remand the said suit or controversy to the district court, by *procedendo*. That the justices of the supreme court shall have like power to direct a certiorari to the circuit court, and the supreme court to remand by *procedendo*, in all cases, in which, by the Constitution of the United States, the supreme court has original jurisdiction. That a certiorari may also issue from any circuit court of the United States, for the removal of any suit in law or equity, depending in any state court within the circuit, to the circuit court, under the following regulations.

1. The said suit shall be cognizable by the circuit courts, with respect to value, and to the party or parties, or to the subject.
2. The defendant may at any time before trial, obtain a certiorari from the clerk of the circuit court for the removal, upon filing with the clerk of the circuit court, an affidavit, that he believes the said suit to be of a nature cognizable in the said court.
3. The circuit court shall, at the commencement of every term, direct the suits thus removed to be first called; when the defendant shall justify such removal by satisfactory proofs, on the pain of having the cause remitted by *procedendo*.
4. If on the trial, the court shall be of opinion, that the cause alledged for the removal was groundless, the defendant shall pay the costs of the suit, let the event thereof be what it will.
5. To prevent removals merely for the sake of delay, it shall be the duty of the circuit courts to expedite the trial of a suit thus removed, by the most effectual means consistent with a full defence.
6. The bail given in a state court, shall stand bound in the circuit courts.
7. A plaintiff in a state court may in like manner, and under a like penalty of costs, obtain a certiorari for the removal of a suit from a state court to the circuit court, upon filing with the clerk of the circuit court an affidavit, as is above directed in the case of a defendant; and also declaring in that affidavit, that the cause alledged for the removal, did not exist, or having existed, was not known to him at any time before the commencement of the term of the circuit court next preceding the application of the certiorari.

And be it further enacted, That in appeals and writs of error, the following rules shall be observed.

48. Appeals  
and writs of er-  
ror.

1. No appeal shall be granted from the judgment or decree of any court of the United States to any other court of the United States, unless such judgment or decree be final, as aforesaid, and amount to the value herein after expressed for a writ of error.
2. Every appeal shall be prayed at the time of rendering the judgment, sentence, or decree: but in cases of admiralty or equity, the circuit or supreme court, or any judge thereof, may upon cause shewn, direct such appeal in six months thereafter.
3. The person appealing shall, by himself, or a responsible person in his behalf, in the office of the clerk of the court, from whose judgment, sentence, or decree, the appeal is prayed, give bond and sufficient security, to be approved by the court, and within a time to be fixed by the court, to the appellee for the due prosecution of his appeal.
4. The penalty of the said bond shall be in a reasonable sum, in the discretion of the court.



5. It shall be the duty of the appellant to lodge an authenticated copy of the record, before the expiration of the second term, after the appeal shall be entered, in the clerk's office of the superior court; or else it shall stand dismissed, unless further time shall be granted by the court, before the end of such second term, for lodging the same.

6. The plaintiff in error shall assign errors upon matter of law only arising on the face of the proceedings. But nothing herein contained shall be construed to affect a writ of error brought upon the grounds of a writ of error coram vobis. [Note 24.]

7. If the judgment or decree be affirmed in the whole, the appellant shall pay to the appellee ten per centum on the sum due thereby, besides the costs on the original suit and appeal.

8. If the judgment or decree be reversed in the whole, the appellee shall pay to the appellant such costs as the court in their discretion shall award.

9. Where the judgment or decree shall be reversed in part, and affirmed in part, the costs of the original suit and appeal shall be apportioned between the appellant and appellee, in the discretion of the court.

10. The circuit and supreme courts shall in case of a partial reversal, give such judgment or decree as the district or circuit courts, as the case may be, ought to have given.

11. On appeals of writs or error, it shall be lawful for the supreme court, or the circuit courts respectively, to issue execution, or remit the cause to the circuit or district courts, as the case may be, in order that execution may be there issued, or that other proceedings may be had thereupon.

12. Writs of error shall be issued *ex debito justitiæ* except in capital offences, provided that the judgment, exclusive of costs, shall amount to dollars, in a district court, or dollars, in a circuit court, or relate to a franchise or freehold of the value of dollars, in a district court, or

dollars, in a circuit court: and no writ of error shall issue in a capital offence; nor shall a writ of error be a superſedeas, unless some judge of the circuit or supreme courts, as the case may be, after inspecting a copy of the record, and being of opinion that there is sufficient error therein for reversing the judgment in whole or in part, shall certify the same; in which case, the clerk issuing the said writ, shall endorse on the said writ of error, that it shall be a superſedeas, and it shall be obeyed as such accordingly.

13. And it shall be also necessary, before a writ of error shall operate as a superſedeas, that bond with security to be approved by the clerk of the court issuing the said writ, shall be given in the same manner, under a like penalty, and the plaintiff in error shall lodge an authenticated copy of the record, under the same regulations, and the parties in error shall be subject to the same judgment and mode of execution, as is already directed in the case of appeals.

14. A writ of error shall not be brought after the expiration of five years from the passing of the judgment complained of: but where a person thinking himself aggrieved by such judgment, shall be an infant, feme covert, non compos mentis, or imprisoned, when the same was passed, the time of such disability shall be excluded from the computation of the said five years.

15. Whensoever the court before which an appeal or writ of error is heard, shall be divided in opinion on such hearing, the judgment, sentence, or decree, shall be affirmed. [Note 25.]

And be it further enacted, That all the said courts of the United States shall have power to grant new trials, according to the principles of law: to impose and administer all necessary oaths or affirmations; to punish by fine or imprisonment, all contempts of authority in any cause or examination before the same; to establish all necessary rules, (subject in the case of the district and circuit courts, to the supreme court as aforesaid) in conformity with the Consti-

43. Powers and rules of the courts.

tution and laws of the United States: And that the proceedings of every day, during a term, shall be drawn at full length by the clerks of the several courts, against the next sitting thereof; and such corrections as may be necessary, being first made therein, they shall be signed by the presiding justice, or in the case of a district court, by the district judge of the district: that when any cause shall be finally determined, the clerks of the several courts shall make a complete record thereof: and that all writs, precepts and summonses, issuing from any court, shall be under the seal, and signed by the clerk of the same, and shall bear teste in the name of the chief justice for the time being.

44. Of juries.

And be it further enacted, That juries shall be sworn and impanelled in all cases prescribed by the Constitution of the United States and the common law: that issues of fact arising in any cause in chancery, may, under the direction of the court, be tried at the bar of the courts of the United States, by a jury there impanelled: that in other cases of equity, and in civil causes of admiralty and maritime jurisdiction, the court alone shall decide: that juries shall be summoned by writs of venire facias, to be directed to the marshal or his deputy, or any other person to be appointed by the court, in case neither the said marshal nor his deputies be indifferent persons, or they be interested in the event of the cause: that challenges shall be according to the course of the common law: that the qualifications of jurors shall be the same as those of jurors allowed to be sworn upon questions of freehold in the state wherein the court sits: that the district and circuit courts, shall at every term, direct the number of jurors to be summoned for the succeeding term; and the juries for each suit shall be determined by ballot: that when from any cause, juries shall not be previously summoned, or being previously summoned, shall fail to attend, by-standers may be summoned to complete the pannel, and the court may impose such fine on every delinquent who has been summoned, as the laws of the state impose in such cases: Provided always, that in criminal cases, juries of the vicinage shall be summoned, according to the course of the common law.

That twenty-four freeholders shall in like manner be summoned to each term of a district and circuit court, to compose a grand jury, on whom, or any of whom, failing to attend, the court may impose such fine as the laws of the state impose in such cases; and that if a sufficient number of those summoned do not meet, to compose a grand jury, at the time appointed, or if having met, any of them should absent himself without permission, so as to leave the number too small for a grand jury, the court may direct an adequate number of by-standers to be summoned to supply the places of the absent.

That all jurors, grand or petit, attending any court of the United States, shall be allowed for every day's attendance thereon, and for every twenty miles of travelling, and their ferriages: that the allowances to the grand jurors shall be paid by the treasury of the United States: that in the bills of cost in every jury-cause, shall be taxed and accounted for to the said treasury; and the allowances to the petit jurors shall also be paid by the said treasury. And jurors coming to, attending on, or returning from any court of the United States, shall be privileged from arrests in civil cases, one day being allowed for every twenty miles from their places of abode; and all arrests contrary hereto, shall be void.

45. Testimony.

And be it further enacted, That in all the courts of the United States, the rules of evidence, so far as they relate to competency and credibility, shall be the same as at common law: that for good cause, the courts of the United States, or any judge, may grant commissions for the examination of witnesses: and that the clerks of the several courts, when any witness shall be about to depart from the district in which a suit is to be tried, or shall by age, sickness, or otherwise, be unable to attend the court; or where the claim or defence of



any party, or a material point thereof, shall depend on a single witness, may upon affidavit thereof, issue a commission for taking the deposition of such witness de bene esse, to be read as evidence at the trial, in case the witness shall then be unable to attend; but the party obtaining such commission, shall give reasonable notice to the other party, of the time and place of taking the deposition. And all witnesses duly summoned to any court of the United States, shall be privileged from arrests in civil cases, while coming to, attending on, or returning from the same; one day being allowed for every twenty miles from their places of abode: and all arrests contrary hereto, shall be void.

That summonses shall be issued by the respective courts for witnesses in any suits depending in the courts of the United States: that if any person, summoned as a witness, and attending the court, or attending the commissioners appointed to take his deposition, shall refuse to give evidence upon oath or affirmation, as the case may be, he shall be committed to prison, either by the court or the commissioners, there to remain until he shall give evidence: that any person summoned as a witness, and failing to attend accordingly, shall be liable to the action of the party injured by such failure: and that in a bill of costs, the charge of more than three witnesses, for the proof of any particular fact, shall not be allowed.

And be it further enacted, That whosoever any person shall be duly charged before any judge or justice of the United States, or justice of peace of a state, upon oath or affirmation, with any crime or offence against the United States, the punishment whereof is fine, imprisonment, or corporal suffering, not extending to death, it shall be lawful for the said judge, justice, or justice of the peace, to issue his warrant, and demand bail of such person for his appearance at the next court, whether a district or circuit court, to be held at the district for the United States, having jurisdiction in the case, or else he shall be committed; that upon the giving of such bail, the recognizance shall be forthwith transmitted to the clerk of the said court: that the witnesses shall be bound by recognizance to appear and testify against the said offender, which shall be forthwith transmitted in like manner: that if for the want or refusal of bail, the said offender shall be committed to close custody, and it shall appear that the offence is to be tried in another district, it shall be the duty of the judge of such district in which he is confined, to issue a warrant to the marshal thereof, commanding him to remove the offender, at the expence of the United States, to the district where the trial is to be had; and that bail may be given in the cases aforesaid, even after commitment. That whosoever any person shall be so charged as aforesaid with any crime or offence against the United States, the punishment whereof is death, it shall be lawful for the said judge, justice, or justice of the peace, to issue his warrant for arresting him: that the said offender may at any time before trial, be admitted to bail by some justice of the supreme court or judge of the district court of the United States, and by no other; but the judge or justice shall not admit to bail, without having due regard to the nature and circumstances of the crime or offence, and of the evidence and the usages of law: that the witnesses shall be bound by recognizance as aforesaid, which recognizance, as well as that of bail, shall be transmitted as aforesaid. That in all criminal cases, not otherwise provided for by some statute of the United States, the process and modes of proceedings shall be the same in the district and circuit courts respectively, with those observed in criminal cases in the state included within the district or circuit; but that no information shall be filed, without the express approbation of the court, on good cause shewn: And that every court rendering judgment in any criminal case, may award execution thereupon.

And be it further enacted, That until it shall be otherwise provided by law, the several courts of the United States shall be the judges of costs; and it shall be

discretionary in the courts to divide costs between the parties, or for good cause, to compel either party to pay the same, without respect to the event of the suit in which the said costs shall have arisen, except where it is herein before otherwise directed.

48. Rules of decision.

And whereas the Constitution of the United States, and the laws made in pursuance thereof, and all treaties made under the authority of the United States, are the supreme law of the land :

Be it further enacted, That the laws of the several states, so far as the claim of a plaintiff, or the defence of a defendant may depend thereon, in respect to its merits, evidence or limitation of time, shall, subject to the supreme law aforesaid, be rules of decision : that in all pleadings, except in limitations of time, and in all trials, except in matters of evidence, and in the regulations of the executions aforesaid, such statutes, as were made before the fourth day of July, in the year one thousand seven hundred and seventy-six, for the amendment of the law in those cases generally, shall also be rules of decision : and moreover, that the common law, so far as the same be not altered by the supreme law, by the laws of particular states, or by statutes, shall also be a rule of decision. [Note 26.]

49. Attornies and attorney-general.

And be it further enacted, That in all the courts of the United States, the parties may plead and manage their own causes personally, or by the assistance of such counsel or attornies at law, as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district, a meet person learned in the law, to act as attorney for the United States, in such district ; who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as a compensation for his services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office, whose duty it shall be to prosecute and conduct all suits in the supreme court in which the United States shall be concerned, and to give his advice and opinion upon questions of law, when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.

50. Repealing clause.

And be it further enacted, That all acts or parts of acts of the United States, coming within the purview of this act, shall be, and the same are hereby repealed ; saving and confirming, however, all things under the said acts or parts of acts already done, or which may be done before the commencement of this act.

51. Commencement.

And be it further enacted, That this act shall commence and be in force on the day of



### T H I R D   P A R T .

#### N O T E S .

(1.) **H**AD it been practicable, the laws respecting the judiciary of the United States, would have been declared to operate in states hereafter admitted into the Union, without the formality of a special act. But it was not attempted; because it cannot be now foreseen at what time or place the district court of the new state ought to meet; to what circuit it shall be attached; at what time or place the circuit court shall be held within it; nor what salary will be commensurate with the labours of the judge.

(2.) The stated sessions are reduced from four to two, partly to accommodate the district judges, under the proposed augmentation of their trouble. It is probable that two of these sessions will exhaust the civil business for a long time, if not forever; especially when we combine the kindred jurisdiction of the circuit courts. With regard to offences cognizable in the district courts, most of them will be prosecuted without an arrest before judgment (except on non-appearance after summons) or will be bailable with cautions. Hence would any possible procrastination be light in the scale.

To those who are acquainted with judicial proceedings, it is almost needless to observe, that it contributes to regularity, the convenience of suitors, and perhaps fairness, to limit the continuance of sessions.

(3.) It may seem superfluous even to hint to courts, that public court-houses, where attainable, ought to be their forum. That every confidence may be safely reposed in the judges, is a fact undeniable at the present day. But in a judiciary system, which looks beyond the existence of those whose integrity is now justly revered, the eye of the world ought to be one of the centinels of justice.

Emergencies which may compel the removal of courts from fixed places of session, are familiar to our memory. A writ of adjournment is the instrument of removal in the country from which we borrow most of our jurisprudence. Here the power of adjourning is divided between the president and the courts: the president may order it in vacation, when the courts cannot assemble for the purpose; and the courts themselves may adjourn, when the exigency breaks forth during their session.

(4.) Some exclusions of the state courts are delineated in the original law. It is an honorable evidence of candor explicitly to announce the rights of the federal judiciary. Dissensions, if not crushed in the beginning, will be more quickly terminated by such a measure. For by ascertaining the ultimatum of those exclusions, and of the federal jurisdiction, every contest of this kind may be brought to an immediate test.

(5.) According to the law of nations, the diplomatic representatives of sovereigns cannot be sued in the courts of a foreign potentate; but consuls, except when they are sheltered from their jurisdiction by actual convention, possess no such immunity.

(6.) How, it may be asked, can any debt, having a federal quality, but below a particular sum, be banished from the federal jurisdiction?—The following reply is offered:

1. The Constitution has undertaken to describe only the kind of persons and things which should have access to the federal courts, not to estimate the value in debate.

2. The supreme court, though inherent in the Constitution, was to receive its first motion from Congress; the inferior courts must have slept forever, without the pleasure of Congress. Can the sphere of authority over value be more enlarged?

3. Without this construction, courts must be ordained for the recovery of every trifling sum, which the unavoidable expences attending it, might exceed ten fold. This therefore, never could have been intended by the Federal Convention.

Farther; without a clause against absent debtors, great injustice may be done to resident citizens. Under the name of absent debtors are included, as well those who have never been inhabitants of the United States, as those who, having been inhabitants, expatriate themselves or abandon a state. An equal partition of the debtor's property among his creditors, being more equitable, than that any one should seize the whole, a common attachment is not recommended. But Congress will perceive that this subject must remain mutilated, until they establish, if not uniform laws of bankruptcy throughout the United States, at least an act of insolvency.

(7.) It is the direct sense of the Constitution, that there should be a chancery. A proper plan then must be devised for it. That upon which most of the states have practised for years, and whose theory wants no explanation, challenges our acceptance. If it were ever liable to the imputation of having usurped on the common law, its effects are now very salutary, and itself a friendly auxiliary to the common law. Upon these ideas, the federal jurisdiction in equity is moulded. Indeed, unless the lenient properties of equity were to be lodged by law some where, the courts of common law would be continually inventing subtleties or fictions by which to engross them.

(8.) This clause will debar the district court from interfering with the judgments at law in the state courts. For if the plaintiff and defendant rely upon the state courts, as far as the judgment, they ought to continue there as they have begun. It is enough to split the same suit into one at law, and another in equity, without adding a further separation, by throwing the common law side of the question into the state courts, and the equity side into the federal courts.

(9.) This restriction assumes for its foundation, that cases arising under the Constitution, laws and treaties of the United States, between any persons or bodies whatsoever, not specially protected by the law of nations, are not without the reach of the judiciary power of the United States. For the subsequent descriptions of persons, and bodies, spread, instead of contracting the jurisdiction. But the dignity of the United States, and of a particular state, ought to exempt them from the cognizance of a single judge. But, can the United States, or a particular state, be defendant? To be a party, as is the phrase of the Constitution, is to be a plaintiff or defendant. Do the rights of sovereignty forbid the latter? They do not, where the sovereign becomes defendant with his own consent. The Constitution is such an act of consent, done by the United States and the individual states; unless it be interpreted, that the individual states may be a party now, only as they were before, to wit, as sovereigns, and that the United States should be on the same footing. To this may be opposed the facility with which the Constitution might have suppressed any ambiguity, by using the word "plaintiff," instead of "party;" the propriety of informing public bodies, that though they are political agents, they are not absolved from moral obligation; and the licence which is sometimes given by a sovereign, to scrutinize his pretensions before his own courts. But the stumbling block is, that neither the United States nor the individual states, can be compelled to be just, if inclined to be obstinate in injustice. Let it rather be believed, that a judgment passed against them by a constitutional tribunal, would be unreluctantly obeyed. If, in defiance of its duty, as a member of the Union, a state should refuse compliance, the general government will doubtless add its earnest remonstrances. What remedy lies beyond these bounds, is a serious intricacy. But without an effectual one, the Constitution would be unnerved, where it ought to be strong.

If in legal analogy an execution were to be sought, a distringas corresponds more aptly than any other. If as a distringas would operate upon public property, in which every individual has an interest, it were better immediately to apply to individuals pro rata, the collection may be made in the usual form. It is the province of policy, however, to discern the delicate path; and as such, it is left without other remarks to the House.

(10.) This clause supposes that the district courts will hold their stated sessions at the same place with the circuit courts: That a criminal may be tried by the first district court which fits, if he desires it, unless a bill shall have been found, or an arraignment made, or some similar step taken in the circuit court. The discretion with which the attorney of the district is indulged, is not more than is due to his office. He will naturally aim at the highest satisfaction for the violated laws of the United States, which the testimony will, in his opinion permit, and will therefore indict, when necessary in the circuit court. And the cases themselves, thus undefined, will not often, if ever, be of a very atrocious cast.

(11.) The following are examples of the cases in No. 7, 8, and 9.  
An action of assault and battery shall not be brought against an inhabitant of Pennsylvania, in any district court but that of Pennsylvania, unless, &c.

An action on a bond given by an inhabitant of Pennsylvania to another person, shall not be brought in the district court of Pennsylvania, although it may have been assigned to another inhabitant of Pennsylvania, except, &c.

A defendant shall not be arrested, or summoned in Pennsylvania, in a suit to be tried in the district court of New-Jersey, except in the next example.

An inhabitant of Pennsylvania connected in interest with an inhabitant of New-Jersey, may with respect to that interest, be sued in Jersey.

(12.) A special session must generally be held for admiralty cases and seizures, because they spring up very irregularly, and will not suffer delay; they are also of considerable length, and would disturb the whole circle of business, unless interdicted to be tried then.

(13.) With this power every justice of the peace is clothed, as a guardian of the public quiet.

(14.) The misbehaviour of the deputies may be so gross, as to strike every tenderness for the character of the officer; and therefore the judge is armed with authority to stop his improper career.

(15.) The personal liberty of a citizen is a subject of precious moment; and as in government unjustly to abridge it, would be denominated tyranny, so not to wrest from individuals an opportunity of cramping it, where a veto can be imposed by law, would be almost a traitorous neglect. With this view, bail has been thus regulated. If every plaintiff may exact bail, it will be exacted in all cases. If no plaintiff may, or if a judge is first to be petitioned, justice will be eluded in many. There is then no choice, but to vest the clerk with discretionary powers on this head (which would be unusual, and perhaps unsafe) or to prescribe some rules like the foregoing.

(16.) These four forms of execution are intimately known to every lawyer in the United States, being among the elements of his science, and having their essence settled by adjudications. Perhaps at a day not far remote, it may be thought an accession to freedom and to commerce, to emancipate the person of a debtor from the grasp of his creditor, and to substitute lands under due caution, against frauds and oppressions, for the payment of debts accruing after a certain time. The respite of execution is to afford an opportunity to obtain a writ of error, or indeed an appeal.

(17.) The requisition that the decree or judgment shall be final, will abolish a variety of appeals or writs of error on the same subject. For if every interlocutory matter would bear an appeal or writ of error, a suit would not be finished in an age. Besides, a mistake in one part of a cause is frequently rectified in another. Nay, the party whom the mistake has prejudiced, may still be victorious at last. Nor will the discontented party be disabled from reaping the same advantages after final judgment, as before.

Let it be here remarked, that appeals and writs of error have some different consequences: Appeals arresting the judgment immediately, and writs of error after some delays and formalities. Appeals are



allowed only in admiralty and revenue and equity causes. In them, the merits are exhibited intire to the revisionary tribunal. But, the real merits have most frequently been decided against the plaintiff in error. He flies to the higher court with the facts of the case found against him, and without a chance of having them re-examined, unless on the face of the proceedings a capital blunder appears. The appellant and plaintiff in error, therefore, stand not on the same line of favor.

The mode of giving testimony in equity, is by depositions: It is also practised in the admiralty, to examine witnesses *visu voce*, and commit their evidence to writing. In our intercourse with foreign nations, an exposition of the conduct of our admiralty, may be frequently decent and useful. Perhaps therefore, the original law is exceptionable in allowing the judge, whose opinion is to be canvassed, the privilege of placing the cause in any attitude which squares best with that opinion.

(18.) This power is granted in behalf of persons confined on suspicion of crimes. The circuit courts may of their own motion, have a gaol delivery earlier than the returns of the stated sessions, or the supreme court may command it, should they be urged by any imminent circumstance.

(19.) On the supposition, that the increased compensation to the district judges would be a *per diem* allowance according to their attendance, the sum would not be an obstacle of consequence; and the admiralty business originating while they are from home, may be so adjusted by their own regulations, as not to suffer by their absence.

(20.) The United States are permitted to be sued in a circuit court, while particular states are sueable only in the supreme court. This difference is made, because the Constitution demonstrates a peculiar care of suits against a state, by giving original jurisdiction in them to the supreme court. Consuls and vice-consuls, being coupled with states, in this particular ought also to be confined to the supreme court, were it not for the inconvenience of such institution.

(21.) Clerks and marshals are indispensable and confidential officers. They ought to have talents, and emoluments equal to a livelihood. Their posts now produce mere trifles. But being bound to be always in the way, and at call, they are precluded from any gainful employment at a distance abroad. The allowances which the circuit courts would make to them, would be abundantly replaced by the public share of fines and forfeitures. But this fund was not designated, because it rests the remuneration of public servants upon the delinquencies of its citizens. Additional duties may from time to time be thrown upon them, which will balance this stipend.

(22.) The jurisdiction of the supreme court is expressed nearly in the words of the Constitution. It was wished, that where the United States were sued, the cause could be confined to the supreme court, as is the case with a particular state. But it is doubtful whether this, being one of the instances in which the supreme court is declared to have appellate jurisdiction, it can have original jurisdiction also under the words of the Constitution.

The formation of writs is a branch of judicial duty. Rules of practice belong to the authority of every court, and their other incidental powers add to that authority. The transition from these to the superintending of the whole course of proceedings, will not therefore be considered as too great. But it is advisable, that every system of practice throughout the states should be consulted, in order that the general proceeding should be accommodated to the habits of the different states, as nearly as may be. The judges of the supreme court have already had some experience on this head, and can therefore better execute the work, than any other persons. It would not be difficult for an individual to offer a scheme apparently good. But he would probably feel too great a bias to the practice to which he had been accustomed; and the House would also be under some perplexity how to reconcile the usages of the states.

(23.) Bail is not needful, except in cases of original jurisdiction. Of these, the number in the supreme court is small, and they will scarcely ever be of such vehemence, as that the postponement of a question of bail, until the court can be moved, should be injurious.

(24.) The plaintiff in error, is limited to errors in law. This is agreeable to the practice which has so much influence on our judicial proceedings. For after a jury has pronounced the facts in issue, and a new trial has either not been solicited, or has been rejected, on the principles of the common law, no court or jury ought to agitate the same facts, unless the judgment should be reversed by a superior court. On the other hand, in equity and admiralty cases, every fact as has been already observed, is before the superior court in the same manner, as it was before the inferior, and may therefore be submitted with propriety to the superior court.

New facts, and new proofs on appeals, are here discarded, on account of the numberless frauds which may be covered under the admission of them.

(25.) Upon an equal division of an appellate court, it is presumable, that the inferior court was right. Without this rule, an appeal or writ of error may be hung up in the supreme court for many years.

(26.) The Constitution, laws and treaties of the United States, are the supreme law; that is, they will controul on federal subjects, every other law.

They will particularly controul the laws of the several states; whether consisting of their own original legislation, the common law, or the statute law, expressly or tacitly adopted.

Such is the extent of mere power. But it may be affirmed, that it will not be exercised, because it is fought not, where the claim of a plaintiff, or the defence of a defendant, rests upon a valid law of a state.

This may happen—1. In personal rights; 2. Rights of property; 3. Torts; and 4. Sometimes even in offences, upon the merits, the evidence, or a limitation of time.

But besides these, are three other points, not tainted by the particular cases, but governed only by the class of actions, to which the individual case belongs: pleadings, with the exception of limitation; trial, with the exception of evidence; and executions.

*The common law is confessedly incompetent on these topics. The alternative then is, between the state laws, and the statutes.*

*The latter have the advantage in uniformity, which the judiciary of the United States ought to cultivate ; and without it, a citizen who is a debtor in one state, may, although a creditor to an equal amount in another, possibly be ruined.*

*But some cases will not be influenced by state laws ; to wit, those of a foreign and transitory nature, as a bond executed in Europe. The supreme law may also be silent. The lex loci will then be admitted in its customary degree ; and where it ends, the common law and statutes aforesaid will enter into the question.*

*But the Attorney-General considers these expedients as merely temporary ; because he trusts, that the necessity of a federal code is too striking to escape the attention of the House. That it must be a work of time and difficulty, is an exhortation immediately to commence it.*

*Upon so grand an undertaking, the practice of nations has been variant : some having directed the materials of a code to be reported in the first instance, and others a complete digest. As too much leisure and reflection cannot be bestowed on such a composition, the former mode is preferable ; especially since the freedom of correcting the matter, may be fettered by the solemnity of a law, when connected with a great whole.*

*But arduous as this effort must be, it is not boundless. It would probably be pointed to the following leading objects : 1. The provisions which already exist by the Constitution and the federal laws : 2. Such laws as may still be necessary for the further execution of the Constitution, and the completion of federal policy : 3. The common law, and statutes : And 4. The laws of the several states, as involved in questions arising therein.*

*These preliminaries having obtained the sanction of Congress, the reducing of them into laws will become more easy and accurate.*



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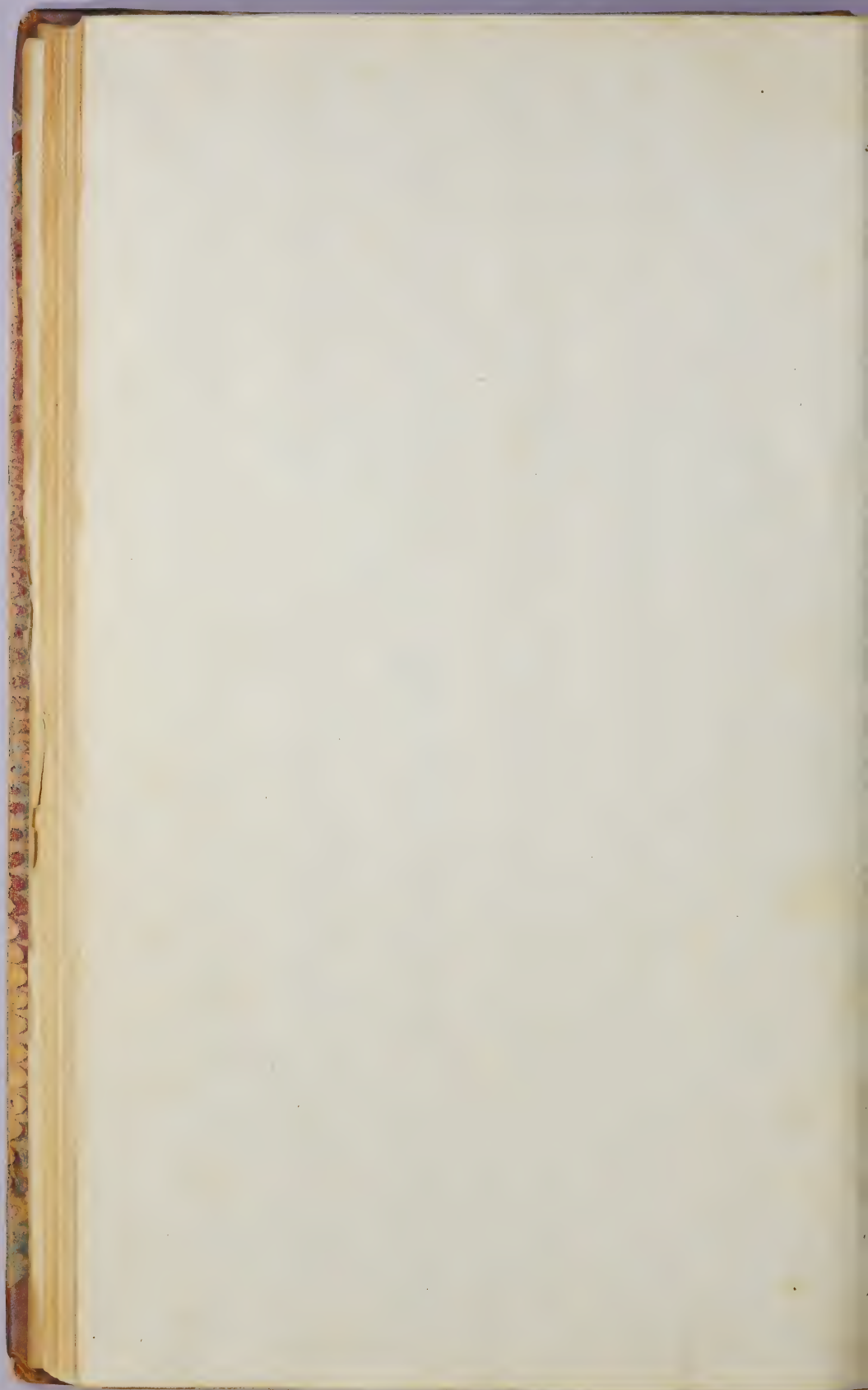
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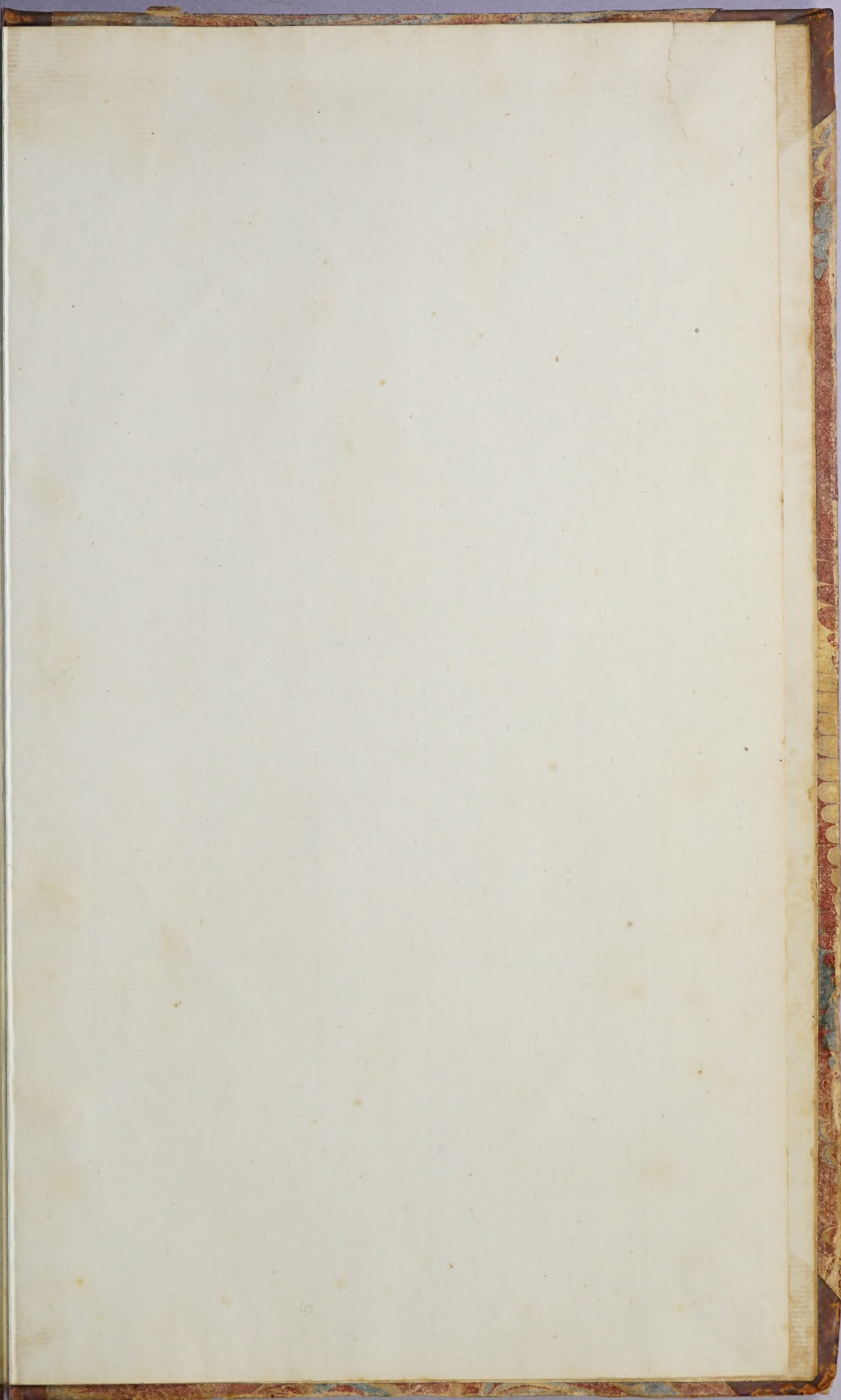
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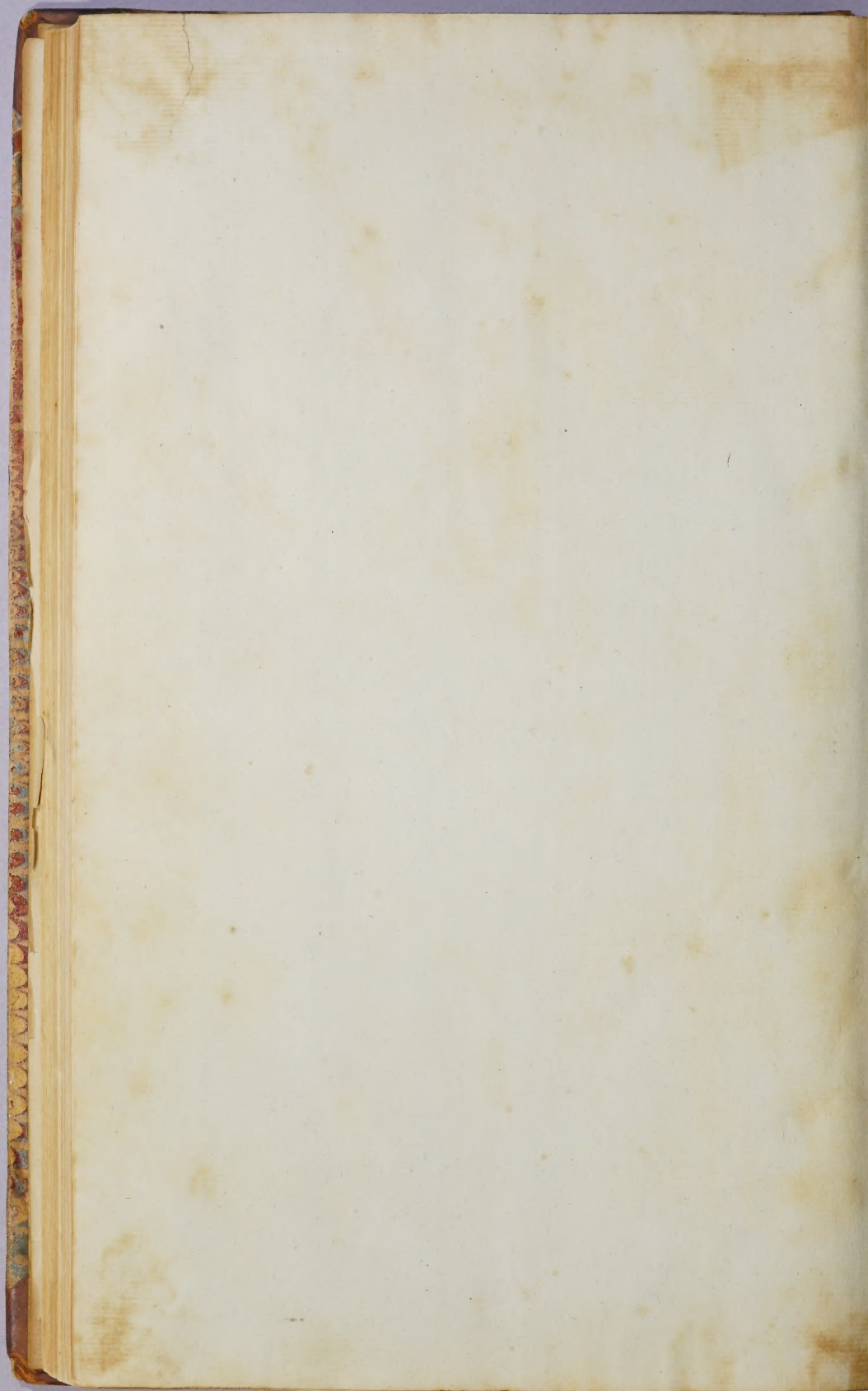
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